SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 4

CASCADE NATURAL GAS CORPORATION, APPELLANT,

vs.

EL PASO NATURAL GAS COMPANY, ET AL.

No. 5

PEOPLE OF THE STATE OF CALIFORNIA, APPELLANT,

vs.

EL PASO NATURAL GAS COMPANY, ET AL.

No. 24

SOUTHERN CALIFORNIA EDISON COMPANY, APPELLANT,

vs.

EL PASO NATURAL GAS COMPANY, ET AL.

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6—Response to letter dated October 23, 1964 from United States Department of Justice	883	1721
7—El Paso Natural Gas Company—Estimated Gathering Charges in San Juan Basin as Included in El Paso Exhibits in Docket No. CP64-76—All Volumes in MCF at 15.025 psia	918	1753
8—Rate Schedule X-5. Agreement between El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation, dated September 1, 1959	919	1754
10—El Paso Natural Gas Company—New Company Acquisitions for Years 1957-1963	934	1769

	Original	Print
Record from the United States District Court for the District of Utah, Central Division—Continued		
PLAINTIFF'S EXHIBITS—Continued		
11—Series of correspondence—Letters dated August 16, 1958 and March 22, 1958 from Pacific Northwest Pipeline Corporation to General Petroleum Corporation with attachments; letter from Pacific Northwest Pipeline Corporation to Phillips Petroleum Company, dated March 24, 1958; letters from Pacific Northwest Pipeline Corporation to Belfer Natural Gas Company, dated November 14, 1957 and August 7, 1957	935	1770
12—Statement showing Breakdown of Estimated Gas Reserves of Pacific Northwest Pipeline Corporation as of December 31, 1959	959	1799
13—Statement showing Breakdown of Estimated Gas Reserves of El Paso Natural Gas Company as of December 31, 1959	960	1800
14—Statement showing Estimated Gas Reserves in San Juan Basin Area El Paso and Pacific Northwest—1959, Merged Company 1960-1963	961	1801
15—Statement showing Estimated Gas Reserves in San Juan Basin Area 1959-1963	962	1802
16—Statement showing Percentage Division of Estimated Gas Reserves in San Juan Basin Area—1959-1963	965	1804
17—Statement showing Estimated Gas Reserves —Excluding San Juan Basin Area Pacific Northwest 1959	966	1805
19—Summary of Pacific Northwest Reserve Studies	967	1806
20—Colorado Interstate Gas Company and Northwest Division, El Paso Natural Gas Company, Summary Analysis, September 1964	968	1807

	Original	Print
Record from the United States District Court for the District of Utah, Central Division—Continued		
PLAINTIFF'S EXHIBITS—Continued		
21—Comparison of Certain Natural Gas Pipe Line Companies, dated January 20, 1965	988	1827
22—Estimated PNW Rate Base and Projected Future Earnings	989	1828
23—Charts re Paradox Production Corporation showing Officers, and assignments	990	1829
DEFENDANT'S EXHIBITS		
A—El Paso Natural Gas Company Proposal for Divestiture, October 13, 1964	996	1835
B—El Paso Natural Gas Company—Common Stock—Record Date—April 24, 1964—Stockholder Breakdown	1087	1876
C—El Paso Natural Gas Company—Common Stock—Record Date—April 24, 1964—List of Holders of 100,000 Shares or More—Individual Holders	1088	1876
D—El Paso Natural Gas Company—Brokers and Nominees	1089	1877
E—Number of Shares of El Paso Natural Gas Company Stock Traded on the New York Stock Exchange, Midwest Stock Exchange, Pacific Coast Stock Exchange	1090	1879
F—Interlocutory Decree for Divestiture	1091	1880
G—El Paso Natural Gas Company Prospectus, January 8, 1957 (excerpts)	1098	1887
H—Analysis of Stock List of El Paso Natural Gas Company—Record Date—November 16, 1964	1109	1904
I—El Paso Natural Gas Company—Common Stock Ownership	1110	1905
J—Lease Sale Agreements—San Juan Basin Area	1111	1907
L—El Paso Natural Gas Company—Program for Divestment	1115	1911

	Original	Print
Record from the United States District Court for the District of Utah, Central Division—Continued		
DEFENDANT'S EXHIBITS—Continued		
R—El Paso Natural Gas Company—Supplement to Defendants' Exhibit H Showing Partial List of Beneficial Owners of Stock Held of Record by Brokers and Nominees (Included in Holders of 1,001 Shares and above which are 1,625 Stockholders of Record in Number Holding 10,399,775 Shares of Record)—Based on Letters from Brokers and Nominees	1122	1919
Record from the United States District Court for the District of Utah, Central Division	1	2007
Transmittal letter dated April 6, 1965 to John F. Davis, Clerk	1	2007
Letter dated April 13, 1965 to Honorable Willis W. Ritter from counsel for Cascade Natural Gas Corporation	3	2009
Letter dated April 8, 1965 to Honorable Willis W. Ritter from counsel for El Paso Natural Gas Company	5	2011
Order denying petition for order enlarging time for docketing case filed by Cascade Natural Gas Corporation	9	2014
Notices (Rule 77(d)) mailed to counsel of record of order denying petition, etc.	10	2015
Decree for Divestiture (unsigned)	12	2017
Stipulation that a Decree for Divestiture may be filed	21	2024
Notice of filing of stipulation for entry of divestiture decree	23	2025
Telegram to Honorable Willis W. Ritter from counsel for State of Oregon	26	2026
Telegram to Honorable Willis W. Ritter from counsel for People of State of California	28	2028
Letter dated June 4, 1965 to Honorable Willis W. Ritter from counsel for El Paso Natural Gas Company	29	2029

	Original	Print
Record from the United States District Court for the District of Utah, Central Division—Continued		
Letter dated June 1, 1965 to Honorable Willis W. Ritter from State of Washington	31	2031
Order that State of Oregon and State of Washington may have ten days to file written proposals they may have for changes in stipulated decree of divestiture	32	2032
Order that counsel for People of the State of California may have ten days within which to file written statement of points and authorities supporting his telegraphic application for stay of proceedings	33	2033
Notice (Rule 77(d)) mailed to counsel of record of order allowing States of California, Oregon and Washington, etc.	34	2034
Notice of Hearing on June 24, 1965	35	2036
Order setting matter on calendar for June 24, 1965 for signing and entry of agreed Decree, etc.	36	2037
Notice (Rule 77(d)) mailed to counsel of record of order setting hearing	37	2038
Telegram to Honorable Willis W. Ritter from counsel for People of State of California	38	2039
Statement in the form of letter dated June 11, 1965 to Honorable Willis W. Ritter from Southern California Edison Company	40	2040
State of Oregon's memorandum re proposed divestiture decree of May 24, 1965	48	2048
Decree (unsigned)	60	2059
Statement of the Washington Utilities and Transportation Commission Amicus Curiae	68	2067
Southern California Edison Company's Application for leave to intervene	82	2078
Exhibit A—Statement in the form of letter dated June 11, 1965 to Honorable Willis W. Ritter from Southern California Edison Company (copy) (omitted in printing)	91	2083

	Original	Print
Record from the United States District Court for the District of Utah, Central Division—Continued		
Telegram to Honorable Willis W. Ritter from Wyoming Public Service Commission	99	2083
Statement in support of proposed divestiture decree filed by State of California Public Utilities Commission	100	2084
Telegram to Honorable Willis W. Ritter from Intermountain Gas Company	104	2086
Transcript of proceedings, June 24, 1965	104-1	2087
Appearances	104-1	2087
Colloquy between court and counsel	104-4	2089
Statement by counsel for Southern California Edison Company and colloquy thereon	104-10	2093
Offers in evidence	104-19	2099
Testimony of Glenn W. Clark—		
direct	104-22	2101
cross	104-39	2113
Examination by Court	104-42	2115
Argument by counsel for State of Oregon and colloquy thereon	104-45	2117
Statement by counsel for Southern California Edison Company and colloquy thereon	104-64	2130
Colloquy between Mr. Harrison, Mr. Williams and Court	104-66	2132
Reporter's certificate (omitted in printing)	104-69	2133
Defendant's Exhibit S—Certificate of Incorporation of Northwest Pipeline Corporation filed June 10, 1965	104-70	2134
Defendant's Exhibit T—By-Laws of Northwest Pipeline Corporation	104-87	2153
Decree for Divestiture signed by Judge Willis W. Ritter, June 24, 1965	105	2172
Order re designation of executive officers of new corporation, Northwest Pipeline Corporation	114	2179
Notice (Rule 77(d)) mailed to counsel of record of order on new corporation	116	2181

	Original	Print
Record from the United States District Court for the District of Utah, Central Division—Continued		
Memorandum for the Court	117	2182
Minutes of June 24, 1965	120	2184
Order denying application for leave to intervene filed June 22, 1965 by Southern California Edison Company	121	2186
Order approving certificate of incorporation and by-laws of Northwest Pipeline Corporation, etc.	122	2186
Notice (Rule 77(d)) mailed to counsel of record of orders, etc.	124	2187
Application for leave to intervene of Southern California Edison Company	125	2189
Exhibit A—Statement in the form of letter dated June 11, 1965 to Honorable Willis W. Ritter from Southern California Edison Company (copy) (omitted in printing)	136	2195
Notice of appeal to the Supreme Court of the United States by State of California with transmittal letter dated July 14, 1965 to Andrew John Brennan, Clerk	144	2196
Notice to counsel of record on Notice of Appeal	150	2199
Appearance of Attorney for Southern California Edison Company	151	2201
Notice of appeal to the Supreme Court of the United States of Southern California Edison Company	152	2201
Notice to counsel on Notice of Appeal	159	2205
Designation by appellee El Paso Natural Gas Company of additional portions of record to be included in record on appeal	160	2206
Clerk's certificate (omitted in printing)	164	2207
Order noting probable jurisdiction	165	2207

[fol. 1]

SUPREME COURT OF THE UNITED STATES

No. 94—October Term, 1963.

UNITED STATES, Appellant,

vs.

EL PASO NATURAL GAS COMPANY, et al.

Appeal from the United States District Court for the District of Utah.

JUDGMENT OF THE SUPREME COURT OF THE UNITED STATES

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Utah, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said United States District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the United States District Court for the District of Utah for further consideration in conformity with the opinion of this Court.

April 6, 1964

A true copy

Test:

John F. Davis, Clerk of the Supreme Court of the United States.

[fol. 2] Notice Mailed to Counsel of Record of Receipt of Judgment by Clerk of USDC for District of Utah (omitted in printing).

[fol. 3]

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

SALT LAKE CITY, UTAH

May 7, 1964

NOTICE OF HEARING ON MAY 27, 1964 FOR FILING OF MANDATE AND HEARING ON PROPOSAL FOR DIVESTITURE

To: William T. Thurman, Esq., U. S. Attorney, 200 Federal Bldg., SLC; Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, SLC; Ray, Quinney and Nebeker, Suite 300, 65 South Main, SLC; Arthur H. Dean, Esq., Sullivan & Cromwell, 48 Wall Street, N. Y.; Leon M. Payne, Esq., 2200 Gulf Bldg., Houston 2, Texas; Gregory A. Harrison, Esq., Brobeck, Phleger & Harrison, 111 Sutter Street, San Francisco, California.

Re: C 143-57

United States of America

vs

El Paso Natural Gas Corporation, et al.

Take Notice, that the above-entitled case has been set for Hearing at Salt Lake City, Utah on Wednesday, May 27, 1964 at 10:00 a.m. before Hohorable Willis W. Ritter on: Filing of Mandate and Hearing on Proposal for Divesture

Andrew John Brennan, Clerk, By: Hana Shuata, Deputy Clerk.

Arguments of counsel will not be taken down by the Court Reporter unless requested by counsel.

[fol. 4]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

C 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

STATE OF OREGON, ex rel. PUBLIC UTILITY COMMISSIONER OF OREGON, Intervener.

APPLICATION FOR LEAVE TO INTERVENE—
Filed May 13, 1964

Comes now the State of Oregon ex rel. Public Utility Commissioner of Oregon by and through the Attorney General of Oregon and applies to the Honorable Court for leave to intervene in the above-entitled matter. This application is made as parens patriae on the grounds and for the reasons as follows:

I

Applicant is charged under the statutes of the State of Oregon and in particular under the provisions of ORS 756.040 with the duty of representing the users and consumers of the services and products of public utilities doing business within the State of Oregon in all controversies before any federal court or commission with respect to the rates and charges of such utilities, and to protect such

[File endorsement omitted]

users and consumers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.

[fol. 5]

II

There are three natural gas distribution companies doing business in the State of Oregon, all of which are public utilities as defined by the statutes of the State of Oregon, and in particular ORS 757.005, and subject to regulation by applicant. The aforementioned distribution companies sold approximately 39,133,000,000 cubic feet of gas in Oregon during 1963 for which they received from consumers approximately $31,260,000 and for which they paid to the defendant El Paso Natural Gas Company approximately $17,880,000. The rates charged by the aforementioned distribution companies are substantially affected by the rates, practices and exactions of the gas transmission company supplying natural gas to them.

III

Prior to the merger of the herein defendant corporations, the defendant Pacific Northwest Pipeline Corporation was the sole and only supplier of natural gas to distribution companies doing business in the State of Oregon. Subsequent to said merger, the defendant El Paso Natural Gas Company became, and ever since has been, and it now is, the sole supplier of natural gas to distribution companies doing business in the State of Oregon.

IV

On April 6, 1964, the United States Supreme Court delivered its opinion on the appeal of the above-entitled matter wherein it was found that the El Paso Natural Gas Company unlawfully acquired the stock and assets of the Pacific Northwest Pipeline Corporation and directed the above-entitled court to order divestiture without delay.

[fol. 6]

V

Any order entered by the above-entitled court with respect to the divestiture required by the aforesaid opinion of the United States Supreme Court will be binding upon the distributors, the consumers and the general public of the State of Oregon. Any such order may seriously prejudice the people of Oregon and Applicant with respect to his duty to protect the users, consumers and the general public in the State of Oregon for the reason that any such order will necessarily be determinative of the capital structure and revenue requirements of the entity which after divestiture will be supplying natural gas to the gas distributors and the people of Oregon, and said capital structure and revenue requirements will in large measure be determinative of the rates and charges for natural gas exacted from the people of Oregon.

VI

There is no other party to the above-entitled matter which will adequately protect the interests of the people of Oregon and Applicant, that is, the Pacific Northwest Pipeline Corporation has for all practical purposes been completely merged into the El Paso Natural Gas Company and perforce is not in a position to protect its own interests or the interests of the public served by it in the Pacific Northwest, including Oregon, and in particular, the interests of the people of Oregon as they relate to the duties of Applicant; the El Paso Natural Gas Company has interests in the disposition of assets which are now in conflict with the interests of the people of Oregon and Applicant; and the position of the United States is one of concern with enforcement of anti-trust laws and the degree of divestiture without regard to the significance of many de-

[fol. 7] tails involved in divestiture as they may vitally affect the best interests of the users, consumers and general public within the State of Oregon.

VII

There are a number of specific provisions in any plan of divestiture which may be submitted which must be resolved by the Court herein in which the people of Oregon and Applicant have a specific interest. Certain of these matters relate to the following:

a) To which company, El Paso or Pacific Northwest, will the laterals constructed after the merger from Portland, Oregon to Eugene and Grants Pass, Oregon, the lateral from the Pacific Gas Transmission mainline to Klamath Falls, Oregon, the lateral into Hood River, Oregon, and the city gate facilities at Madras, Bend, Redmond and Gilchrist, Oregon, belong?

b) Which company, El Paso or Pacific Northwest will be entitled to the gas acquired in Canada after the merger which is transported into the United States at Kingsgate, British Columbia?

c) Will there be any modification or impairment of the pre-merger contract between El Paso and Pacific Northwest regarding the importation of gas at Sumas, Washington, and the transportation charge with respect thereto?

d) Which company will take title to the Opal gasoline plant located near Opal, Wyoming?

e) What disposition will be made of the field sales of gas in the San Juan Basin which were made by El [fol. 8] Paso to Pacific Northwest prior to the merger?

f) Should the monetary advances made to the Belco Petroleum Company be charged to El Paso or Pacific Northwest?

g) How are the tax loss carryovers which Pacific Northwest had prior to the merger to be handled?

In addition to the foregoing specific questions, Applicant anticipates that there will be further matters of major significance with respect to the divestiture involved herein which the Court will have to resolve, which will directly involve the economic interests of the people of the State of Oregon and upon which the people of Oregon have a right to be informed and be heard.

VIII

The intervention of Applicant in these proceedings will not occasion the introduction of extraneous issues, disrupt the proceedings or run counter to the policy of the statute under which the action was brought (15 USC 18).

IX

No pleadings are submitted with this application for the reason that all issues raised by the pleadings herein have been resolved and Applicant does not seek to challenge the ruling of the Supreme Court. The remaining issues herein involve the equity jurisdiction of the Court with regard to the approval or disapproval of the method of divestiture, the corporate reorganization of El Paso, the possible creation of a new corporate entity, the corporate structure of such entity, and the identification of the assets subject to divestiture. No pleadings or plan of divestiture have been filed by the parties herein respecting the foregoing issues.

[fol. 9] Wherefore, Applicant prays for an order of the Court permitting him to intervene in the above-entitled cause and to participate therein as a party in intervention in such cause.

Respectfully submitted,

Robert Y. Thornton, Attorney General of Oregon; Lloyd G. Hammel, Chief Counsel, Assistant Attorney General Assigned to the Public Utility Commissioner; By Richard W. Sabin, Assistant

Attorney General, of Counsel for Public Utility Commissioner of Oregon, 103 Public Service Building, Salem, Oregon 97310, Phone: Area Code 503, 364-2171, Ext. 615.

Local Counsel:

Calvin L. Rampton, Continental Bank Bldg., 200 South Main Street, Salt Lake City, Utah.

[fol. 10] *Duly sworn to by Jonel C. Hill, jurat omitted in printing.*

Certificate of Service (omitted in printing).

[fol. 11]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Intervenor.

APPLICATION FOR LEAVE TO INTERVENE—
Filed May 14, 1964

Comes now the Washington Utilities and Transportation Commission, a legally constituted agency of the State

[File endorsement omitted]

of Washington, and respectfully applies for leave to intervene in the above-entitled proceeding pursuant to Rule 24 of the Federal Rules of Civil Procedure. This application is submitted as parens patriae on the following grounds and for the following reasons:

I

Applicant, under the laws of the State of Washington and more specifically under the provisions of RCW 80.04.040, is charged with the duty of regulating in the public interest the rates, services, facilities and practices of companies engaging within the State of Washington in the business of supplying any utility service or commodity, including natural gas, to the public for compensation. Applicant is further charged by the provisions of RCW 80.28.020 with the duty of determining just and reasonable [fol. 12] rates and practices to be observed by such companies supplying natural gas to the public for compensation. Applicant represents the interests of users and consumers of the services and products of such companies in controversies before any federal court or commission involving matters affecting rates and practices of such companies in order to protect such users and consumers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service under just and reasonable rates and practices.

II

At the present time several natural gas distribution companies are engaged in supplying gas utility service to consumers within this state. The cost of service for these companies upon which just and reasonable rates and charges are predicated in large part, is materially affected by the level of rates and charges imposed by their supplier. Their ability to meet the requirements of their customers is dependent upon the availability of adequate gas reserves of their supplier.

III

Prior to the merger of El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation, the latter was the sole supplier of natural gas to distributing companies engaged in gas utility service in the State of Washington. Since the merger of the defendant corporations, El Paso Natural Gas Company has been, and continues to be, the sole supplier of natural gas to this state. In 1963 gas distribution companies in this state purchased from such supplier 87,500,874,000 cubic feet of natural gas and the volume of such purchases is steadily increasing.

IV

On April 6, 1964, the Supreme Court of the United States [fol. 13] issued its decision on the appeal of the above-entitled case wherein it was found that El Paso Natural Gas Company unlawfully acquired the stock and assets of Pacific Northwest Pipeline Corporation and directed this court to order divestiture without delay. However, no guidelines were given as to the manner in which the Supreme Court's mandate was to be implemented.

V

Inasmuch as the decision of the Supreme Court herein did not prescribe the method by which divestiture is to be accomplished, applicant is so situated as to be adversely affected by the details of disposition of the property herein which is subject to distribution or disposition by the court. The plan for divestiture must necessarily result in the creation of an entity having an as yet unknown capital structure, investment and gas supply, which will dictate to a large extent its ability to continue service under reasonable rates and practices as they affect the interest of consumers in the State of Washington. The method of divestiture will establish conditions which the federal regulatory agency for all practical purposes must accept and in turn will establish conditions under which rates and prac-

tices to customers within the State of Washington must be established. Consumers and users in the State of Washington, and applicant, will therefore be bound by any order establishing the method of divestiture. It is not the intention of applicant to inject the issue of level of rates into the instant proceeding, either to the distribution companies or to the ultimate consumer. The determination of divestiture methods which will irrevocably establish conditions under which rates are to be made, however, is a matter of vital concern to applicant in the discharge of its re- [fol. 14] sponsibilities.

VI

There is no other party to the above-entitled proceeding which can adequately protect the interest of the people of the State of Washington in that Pacific Northwest Pipeline Corporation has been completely merged into El Paso Natural Gas Company and is therefore not in a position to protect its own interests or the interests of the public previously served by it in the State of Washington; that El Paso Natural Gas Company has interests in the disposition of assets presently subject to the jurisdiction of this court which are in conflict with the interests of applicant and the people of the State of Washington; that while the United States acting by and through the Attorney General is properly characterized as the guardian of the public interest so far as the competitive aspects of antitrust litigation and divestiture are concerned, applicant does not believe the position of the United States to be one of primary concern with the significance of many details involved in divestiture as they vitally affect the best interests of the users, consumers and general public within the State of Washington from the standpoint of rates and service.

VII

Applicant anticipates that there will be many matters of major significance in any proposed plan of divestiture

herein, all of which will be of direct concern to applicant and the public of the State of Washington, including, *inter alia*:

(1) To which company, El Paso or Pacific Northwest, will the laterals constructed after the merger, such as from near Olympia, Washington, to serve por- [fol. 15] tions of the Olympic Peninsula and Grays Harbor areas of Washington belong?

(2) Which company, El Paso or Pacific Northwest, will be entitled to the gas allocated after the merger of El Paso from the Pacific Gas Transmission Company?

(3) Will there be any modification or impairment of the pre-merger contract between El Paso and Pacific Northwest regarding the importation of gas at Sumas, Washington, and the service charge with respect thereto?

(4) Which company will take title to the Opal gasoline plant located near Opal, Wyoming?

(5) What disposition will be made of the gas reserves of the former Pacific Northwest Pipeline Corporation in the San Juan Basin and additional gas reserves in such Basin and elsewhere?

(6) Should the monetary advances made to the Belco Petroleum be charged to El Paso or Pacific Northwest?

(7) How are the tax loss carryovers which Pacific Northwest had prior to the merger to be handled?

VIII

The granting of this petition will in no way broaden the issues before this court, nor will it unduly delay the pro- [fol. 16] ceedings, or prejudice the adjudication of the

rights of the original parties, or be in conflict with the policy and purposes of the statute under which the action was commenced.

IX.

No pleading setting forth a claim or defense is submitted herewith for the reason that all issues raised by the pleadings herein have been resolved and the remaining issues are directly to the equity jurisdiction of this court with regard to the method of divestiture, the corporate reorganization of El Paso Natural Gas Company, the formulation of a new corporate entity to succeed to the interest of El Paso in service to the Northwest area or the reconstituting of Pacific Northwest Pipeline Corporation, and the identification of assets subject to divestiture and their disposition. Subsequent to the decision of the Supreme Court of the United States herein, no pleadings or plans for divestiture have been filed by the principal parties hereto.

WHEREFORE, Applicant prays for an order of this Court permitting it to intervene in the above-entitled cause and to participate therein as a party in intervention in such cause.

Dated This 13th day of May, 1964.

John J. O'Connell, Attorney General, Frank P. Hayes, Assistant Attorney General, Attorneys for Applicant Washington Utilities and Transportation Commission.

Office and Post Office Address: Temple of Justice, Olympia, Washington.

[fol. 17] Certificate of Service (omitted in printing).

[fol. 18]

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

SALT LAKE CITY, UTAH

May 14, 1964

FURTHER NOTICES ON HEARING ON MAY 27, 1964 ON APPLICATIONS FOR LEAVE TO INTERVENE

To: William T. Thurman, Esq., U. S. Attorney, 200 Federal Bldg., SLC; Van Cott, Bagley, Cornwall and McCarthy, 65 South Main, SLC; Ray, Quinney and Nebeker, Suite 300, 65 South Main, SLC; Arthur H. Dean, Esq., Sullivan & Cromwell, 48 Wall Street, N. Y.; Leon M. Payne, Esq., 2200 Gulf Bldg., Houston 2, Texas; Gregory A. Harrison, Esq., Brobeck, Phleger & Harrison, 111 Sutter Street, San Francisco, California; Richard W. Sabin, Esq., Asst. Attorney General, State of Oregon, Public Utility Commissioner, Salem, Oregon (97310); Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., SLC.

Re: C 143-57—United States of America

vs

El Paso Natural Gas Corporation, et al.

Take Notice, that the above-entitled case has been set for Hearing at Salt Lake City, Utah on Wednesday, May 27, 1964 at 10:00 A. M. before Honorable Willis W. Mitter on:

Application for Leave to Intervene (State of Oregon)

Andrew John Brennan, Clerk, By: H. S., Deputy Clerk.

Arguments of counsel will not be taken down by the Court Reporter unless requested by counsel.

[fol. 19]

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

SALT LAKE CITY, UTAH

May 15, 1964

To: William T. Thurman, Esq., U. S. Attorney, 200 Federal Bldg., SLC; Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, SLC; Ray, Quinney and Nebeker, Suite 300, 65 South Main, SLC; Arthur H. Dean, Esq., Sullivan and Cromwell, 48 Wall Street, N. Y.; Leon M. Payne, Esq., 2200 Gulf Bldg., Houston, 2, Texas; Gregory A. Harrison, Esq., Brobeck, Phleger & Harrison, 111 Sutter Street, San Francisco, California; Richard W. Sabin, Esq., Asst. Attorney General, State of Oregon, Public Utility Commissioner, Salem, Oregon (97310); Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., SLC; James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington.

Re: C 143-57—United States of America

vs

El Paso Natural Gas Corporation, et al.

Take Notice, that the above-entitled case has been set for Hearing at Salt Lake City, Utah on Wednesday, May 27, 1964 at 10:00 a.m. before Honorable Willis W. Ritter on:

Application for Leave to Intervene (State of Washington)

Andrew John Brennan, Clerk, By: Hana Shuata, Deputy Clerk.

[fol. 20]

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH
SALT LAKE CITY, UTAH

May 15, 1964

NOTICE VACATING HEARING OF MAY 27, 1964

To: William T. Thurman, Esq., U. S. Attorney, 200 Post Office & Courthouse Bldg., SLC; Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, SLC; Ray, Quinney and Nebeker, Suite 300, 65 South Main, SLC; Arthur H. Dean, Esq., Sullivan and Cromwell, 48 Wall Street, N. Y.; Leon M. Payne, Esq., 2200 Gulf Bldg., Houston, 2, Texas; Gregory A. Harrison, Esq., Brobeck, Phleger & Harrison, 111 Sutter Street, San Francisco, California; Richard W. Sabin, Esq., Asst. Attorney General, State of Oregon, Public Utility Commissioner, Salem, Oregon (97310); Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., SLC; James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington.

Re: C 143-57—United States of America

vs

El Paso Natural Gas Corporation, et al.

Please Take Notice, that the above-entitled case set for Hearing on Wednesday, May 27, 1964 at 10:00 a.m. in Salt Lake City, Utah before Honorable Willis W. Ritter on the following:

Filing of Mandate and Hearing on Proposal for Divesture
Application for Leave to Intervene (State of Oregon)
Application for Leave to Intervene (State of Washington)

Has Been Vacated.

Andrew John Brennan, Clerk, By: H. S., Deputy Clerk.

[fol. 21]

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

Judge Ritter

C 143-57

UNITED STATES OF AMERICA

vs

EL PASO NATURAL GAS CORPORATION, et al.

MINUTES—May 15, 1964

This matter came before the court in chambers at 2:00 p.m. William T. Thurman, Esq., United States Attorney, appeared for the plaintiff. Gregory A. Harrison, Esq. and Sid N. Cornwall, Esq. appeared for defendant, El Paso Natural Gas Corporation.

Upon stipulation of counsel and approval of the court, hearing in this matter set for Wednesday, May 27, 1964 at 10:00 a.m. was vacated for at least thirty (30) days.

cc: William T. Thurman, Esq., U.S. Attorney, 200 Post Office and Courthouse Bldg., SCL; Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, SLC; Ray, Quinney and Nebeker, Suite 300, 65 South Main, SLC; Arthur H. Dean, Esq., Sullivan and Cromwell, 48 Wall Street, N. Y.; Leon M. Payne, Esq., 2200 Gulf Bldg., Houston, 2, Texas; Gregory A. Harrison, Esq., Brobeck, Phleger and Harrison, 111 Sutter Street, San Francisco, California; Richard W. Sabin, Esq., Asst. Attorney General, State of Oregon Public Utility Commissioner, Salem, Oregon (97310); Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., SLC; James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington.

[fol. 22]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

C 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

STATE OF IDAHO, ex rel. Idaho Public Utility Commission, Applicant for Intervention.

APPLICATION FOR LEAVE TO INTERVENE—
Filed May 18, 1964

Comes now the State of Idaho, ex rel. Idaho Public Utility Commission by and through the Attorney General of Idaho and applies to the Honorable Court for leave to intervene in the above-entitled matter. This application is made as parens patriae on the grounds and for the reasons as follows:

I

Applicant is charged under the statutes of the State of Idaho and in particular under the provisions of Sections 61-204 and 61-506, Idaho Code, with the duty of representing the users and consumers of the services and products of public utilities doing business within the State of Idaho in all controversies before any federal court or commission with respect to the rates and charges of such utilities, and

[File endorsement omitted]

to protect such users and consumers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.

[fol. 23]

II

There are two natural gas distribution companies doing business in the State of Idaho, all of which are public utilities as defined by the statutes of the State of Idaho, and in particular Section 61-129, Idaho Code, and subject to regulation by applicant. The aforementioned distribution companies sold approximately 17,951,000,000 cubic feet of gas in Idaho during 1963 for which they received from consumers approximately $13,783,000 and for which they paid to the defendant El Paso Natural Gas Company approximately $7,076,000. The rates charged by the aforementioned distribution companies are substantially affected by the rates, practices and exactions of the gas transmission company supplying natural gas to them.

III

Prior to the merger of the herein defendant corporations, the defendant Pacific Northwest Pipeline Corporation was the sole and only supplier of natural gas to distribution companies doing business in the State of Idaho. Subsequent to said merger, the defendant El Paso Natural Gas Company became, and ever since has been, and it now is, the sole supplier of natural gas to distribution companies doing business in the State of Idaho.

IV

On April 6, 1964, the United States Supreme Court delivered its opinion on the appeal of the above-entitled matter wherein it was found that the El Paso Natural Gas Company unlawfully acquired the stock and assets of the Pacific Northwest Pipeline Corporation and directed the above-entitled court to order divestiture without delay.

[fol. 24] V

Any order entered by the above-entitled court with respect to the divestiture required by the aforesaid opinion of the United States Supreme Court will be binding upon the distributors, the consumers and the general public of the State of Idaho. Any such order may seriously prejudice the people of Idaho and Applicant with respect to his duty to protect the users, consumers and the general public in the State of Idaho for the reason that any such order will necessarily be determinative of the capital structure and revenue requirements of the entity which after divestiture will be supplying natural gas to the gas distributors of the people of Idaho, and said capital structure and revenue requirements will in large measure be determinative of the rates and charges for natural gas exacted from the people of Idaho.

VI

There is no other party to the above-entitled matter which will adequately protect the interests of the people of Idaho and Applicant, that is, the Pacific Northwest Pipeline Corporation has for all practical purposes been completely merged into the El Paso Natural Gas Company and perforce is not in a position to protect its own interests or the interests of the public served by it in the Pacific Northwest, including Idaho, and in particular, the interests of the people of Idaho as they relate to the duties of Applicant; the El Paso Natural Gas Company has interests in the disposition of assets which are now in conflict with the interests of the people of Idaho and Applicant; and the position of the United States is one of concern with enforcement of anti-trust laws and the decree of divestiture [fol. 25] without regard to the significance of many details involved in divestiture as they may vitally affect the best interests of the users, consumers and general public within the State of Idaho.

VII

There are a number of specific provisions in any plan of divestiture which may be submitted which must be resolved by the Court herein in which the people of Idaho and Applicant have a specific interest. Certain of these matters relate to the following:

a) Which company, El Paso or Pacific Northwest will be entitled to the gas acquired in Canada after the merger which is transported into the United States at Kingsgate, British Columbia?

b) Will there be any modification or impairment of the pre-merger contract between El Paso and Pacific Northwest regarding the importation of gas at Sumas, Washington, and the transportation charge with respect thereto?

c) Which company will take title to the Opal gasoline plant located near Opal, Wyoming?

[fol. 26]

d) What disposition will be made of the field sales of gas in the San Juan Basin which were made by El Paso to Pacific Northwest prior to the merger?

e) Should the monetary advances made to the Belco Petroleum Company be charged to El Paso or Pacific Northwest?

f) How are the tax loss carryovers which Pacific Northwest had prior to the merger to be handled?

In addition to the foregoing specific questions, Applicant anticipates that there will be many further matters of major significance with respect to the divestiture involved herein which the Court will have to resolve, which will directly involve the economic interests of the people of the State of Idaho and upon which the people of Idaho have a right to be informed and be heard.

VIII

The intervention of Applicant in these proceedings will not occasion the introduction of extraneous issues, disrupt the proceedings or run counter to the policy of the statute under which the action was brought (15 USC 18).

IX

No pleadings are submitted with this application for the reason that all issues raised by the pleadings herein have been resolved and Applicant does not seek to challenge the ruling of the Supreme Court. The remaining issues herein involve the equity jurisdiction of the Court with regard to the approval or disapproval of the method of divestiture, the corporate reorganization of El Paso, the possible creation of a new corporate entity, the corporate structure of such entity, and the identification of the assets subject to [fol. 27] divestiture. No pleadings or plan of divestiture have been filed by the parties herein respecting the foregoing issues.

Wherefore, Applicant prays for an order of the Court permitting the Idaho Public Utility Commission to intervene in the above-entitled cause and to participate therein as a party in intervention in such cause.

Respectfully submitted,

Allan G. Shepard, Attorney General, State of Idaho;
Larry D. Ripley, Assistant Attorney General, State of Idaho.

[fol. 28] *Duly sworn to by Ralph H. Wickberg, jurat omitted in printing.*

Certificate of Service (omitted in printing).

[fol. 29]

[Stamp—Filed in United States District Court, District of Utah—Time: JUN 1 1964—Andrew John Brennan, Clerk]

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

LETTER TO HON. WILLIS W. RITTER FROM PARADOX PRODUCTION CORP., TOGETHER WITH LETTER TO EL PASO NATURAL GAS CO. FROM PARADOX PRODUCTION CORP.

PARADOX PRODUCTION CORPORATION

404 EXECUTIVE BUILDING

SALT LAKE CITY 11, UTAH

May 22, 1964

Hon. Willis W. Ritter
U. S. District Judge
Federal Court House
Salt Lake City, Utah

Re: United States vs. El Paso
Natural Gas Co.

Dear Judge Ritter:

In connection with the above-entitled matter which is pending in your Court, I am enclosing herewith a copy of a letter of even date which has been mailed to El Paso Natural Gas Co.

Very truly yours,

PARADOX PRODUCTION CORPORATION

/s/ O. L. CARSON
O. L. Carson, President

OLC:mf
Encl.

[fol. 30]
[Stamp—Filed in United States District Court, District of Utah—Time: JUN 1 1964—Andrew John Brennan, Clerk]

May 22, 1964

El Paso Natural Gas Company
El Paso Natural Gas Building
El Paso, Texas

Attention: Mr. Howard Boyd, President

Dear Sir:

Paradox Production Corporation is a publicly owned Nevada corporation formed by personnel of Fish Northwest Constructors, Pacific Northwest Pipe Line Corporation, and Salt Lake City businessmen following the 1957 acquisition of Pacific Northwest Pipe Line Corporation by your Company. Paradox was formed for the purpose of exploring for and producing Oil and Gas properties.

Among Paradox founders who played a dominant role in the construction of the Pacific Northwest Pipe Line were J. Don Creveling (Manager of Land and Rights of Way), J. W. Hall (General Manager of all Construction), Morriss C. Foster (Assistant Manager of Land and Rights of Way), Jack E. Grazier (Manager of Electrical and Communication Design), H. R. Garabrant (Assistant Manager of Gas Measurement), R. C. Appling (Manager of Gas Dispatching and Control), Bruce R. Hester (Chief Clerk of Construction), Joseph E. Fitzgerald (Land and Rights of Way Department), and the undersigned. My knowledge of the Pacific Northwest Pipe Line Corporation was acquired as Chief Engineer (later as Project Manager) responsible for the design and construction of its facilities.

In view of these origins it is natural that Paradox Management has followed the divestiture proceedings instituted by the Department of Justice in the Utah Federal District Court and has noted the Supreme Court's order of April 5, 1964 that divestiture be ordered without delay.

Paradox has obtained the backing of substantial financial and business interests in the United States and is fully prepared to purchase the assets which will be the subject of the divestiture order at such price and on such terms and conditions as may, after a full examination of all relevant business, financial and legal considerations by the Utah Federal District Court, the Department of Justice and our respective companies, appear fair, equitable and proper.

[fol. 31] This acquisition by Paradox will be subject to none of the infirmities which have led to the present order of divestiture. Moreover, the management and operating personnel who will be associated with Paradox in this undertaking are intimately familiar with the natural gas pipeline business in general and the Pacific Northwest system in particular.

Therefore, we urgently request the privilege of meeting with you and representatives of the Department of Justice in order to discuss and analyze the factors relevant to preparation and presentation of a divestiture plan.

Yours truly,

PARADOX PRODUCTION CORPORATION

/s/ O. L. CARSON
O. L. Carson, President

OLD:mf

cc Hon. Willis W. Ritter, Chief Judge,
U. S. District Court for the District of Utah
Federal Courthouse, Salt Lake City, Utah

Hon. Lawrence Williams, Acting Asst. Attorney-General
Anti-Trust Division, Department of Justice
Washington, D. C.

[fol. 34]
[Stamp—Filed in United States District Court, District of Utah—Time: JUN 19 1964—Andrew John Brennan, Clerk]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

LETTER FROM PARADOX PRODUCTION CORP. TO EL PASO NATURAL GAS CO.

June 18, 1964

EL PASO NATURAL GAS COMPANY
1 Chase Manhattan Plaza
New York 5, N. Y.

Attention: Mr. Howard Boyd, President

Dear Sir:

This will acknowledge receipt on June 5th of your letter of June 2, 1964 stating that the interest of Paradox Production Corporation in the divestiture of El Paso's Northwest Division has been noted.

In view of the Supreme Court's order that divestiture be accomplished without delay, Paradox has understood this matter to be one in which time is of the essence. For that reason, I was somewhat disappointed at your unwillingness to meet with me when I was in New York City on June 3rd and at the failure of your letter to respond to my request for a meeting with you and representatives of the Department of Justice.

I reiterate that Paradox is fully prepared to purchase the assets which will be the subject of the divestiture order at such price and on such terms and conditions as may, after a full examination of all relevant business, financial and legal considerations, appear fair, equitable and proper.

Since this purchase, as would any divestiture plan, requires disclosure, examination and discussion of such relevant factors in cooperation with the Department of Justice and the Utah Federal District Court, I hope that the

meeting requested in the last paragraph of my letter of May 22, 1964 can be held at the earliest possible time.

Very truly yours,

PARADOX PRODUCTION CORPORATION

/s/ O. L. CARSON
O. L. Carson
President

OLC:CKM:mf

cc Hon. Willis W. Ritter, Chief Judge, U. S. District Court for the District of Utah.

cc Hon. William Orrick, Assistant Attorney General, Antitrust Division, U. S. Department of Justice, Washington, D. C.

[fol. 35]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY, and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

WASHINGTON NATURAL GAS COMPANY, Intervenor.

APPLICATION FOR LEAVE TO INTERVENE—Filed June 22, 1964

Comes now Washington Natural Gas Company, a corporation, and respectfully applies for leave to inter-

[File endorsement omitted]

vene in the above entitled proceeding pursuant to Rule 24 of the Federal Rules of Civil Procedure. This application is submitted on the following grounds and for the following reasons:

I

Applicant is a corporation organized and existing under the laws of the State of Delaware and admitted and qualified to do business within the State of Washington.

II

Applicant is engaged in the intrastate distribution and sale of natural gas within the State of Washington. It is a utility company subject to regulation as to rates, service and other matters by the Washington Utilities and Transportation Commission pursuant to Title 80 of the Revised Code of Washington. Said Commission has granted to applicant, and applicant now holds certificates of conven- [fol. 36] ience and necessity authorizing it to sell natural gas and render service throughout its service area hereinafter described. Because of the facts herein stated, applicant is required to provide and render gas service to its existing customers and to future potential customers within its service area in accordance with its tariffs filed with and approved by said Commission and applicable rules and orders promulgated by said Commission.

III

The service area of applicant extends for approximately 125 miles from Everett and Marysville, Washington in the north, to Centralia and Chehalis, Washington in the south. The five counties in which the company's service area is located had a total estimated population at the end of 1963 of 1,638,000, representing approximately 55% of the total estimated population of the State of Washington, which was 3,005,100. The four largest cities served by applicant

are Seattle, Tacoma, Everett, and Olympia and it also serves 38 other incorporated communities plus densely populated unincorporated areas situated in the five counties of Snohomish, King, Pierce, Thurston, and Lewis. At the end of February, 1964, the applicant was selling gas to 311,300 customers and during the seven years ended December 31, 1963, the applicant's average growth amounted to 8,740 new customers per year. Applicant expects to continue to add new customers at at least that average rate yearly within the foreseeable future.

IV

Applicant purchases all of its natural gas requirements from the defendant, El Paso Natural Gas Company. Applicant has no other available source of natural gas. All such gas is purchased from El Paso pursuant to contracts and rate schedules approved by the Federal Power Commission. Applicant has firm contracts for purchase of natu- [fol. 37] ral gas from El Paso which have a combined daily contract demand of 1,379,500 therms. One therm is 100,000 BTU and is the equivalent of 100 cubic feet of gas of 1,000 BTU per cubic foot. In 1963, applicant purchased a total of 403,371,680 therms or 40,337,168,000 cubic feet of 1,000 BTU gas and sold 390,143,621 therms, or the equivalent of 39,014,362,100 cubic feet of 1,000 BTU gas. Applicant's total revenues from gas sales in 1963 were $28,473,000 and it paid to El Paso for gas purchased a total of $13,989,652. Applicant alleges upon information and belief that in 1963 its purchases from El Paso constituted 17.89% by volume and 19.09% in dollar value of all natural gas sold by El Paso in the seven states of Colorado, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming.

V

Applicant has over 6,000 holders of its common stock who reside throughout the United States. Applicant has outstanding 50,000 shares of preferred stock of the aggre-

gate value of $5,000,000 for which it has a fixed 5% annual dividend requirement and an annual sinking fund requirement of $100,000; it also has outstanding four series of first mortgage bonds in the aggregate principal amount of $33,240,000 with an annual sinking fund requirement in 1964 and 1965 of $780,000, increasing to $1,010,000 in 1966 and years thereafter and $3,100,000 aggregate principal amount of sinking fund debentures with an annual sinking fund requirement of $200,000. At June 24, 1964, applicant will sell an additional $5,000,000 principal amount of sinking fund debentures. Commencing in the year 1967, the combined annual obligation of applicant for preferred dividends and annual sinking fund payments toward retirement of presently outstanding preferred stock, first mortgage bonds and debentures will be $1,650,000 and for interest on bonds and debentures will be ap- [fol. 38] proximately $2,000,000 per annum. With expected additional long term financing, the annual obligations for these purposes will remain at amounts at least as large for an indefinite number of years.

Each of the trust indentures under which all of applicant's bonds and debentures are issued contains the requirement that the applicant file, annually, with the trustees for the bonds and debentures a certificate stating whether the date of exhaustion of applicant's available gas supply will be earlier than the respective maturity dates of the several issues of bonds and debentures. If such date of exhaustion is shown to be earlier than the maturity date of any particular series, applicant is required to increase its annual sinking fund payments for said series in an amount sufficient to retire all of the remaining bonds or debentures of said series six months before said date of exhaustion.

VI

Applicant is subject to vigorous competition in its sale of gas, particularly from the oil fuels industry and, to a

lesser degree, from the electric industry. The average price of gas sold by applicant to its residential heating customers is 13.35 cents per therm and the average price of diesel oil for residential heating within applicant's service area, based upon dealers' average posted prices, is 13.0 cents per therm. In 1963, 63% of applicant's sales of gas (by volume) was to interruptible customers, many of whom could and would convert to other fuel or type of energy if there were a significant price advantage. At the present time applicant and certain other purchasers of natural gas from El Paso are protected against a rate increase by El Paso by virtue of a stipulation filed by it with the Federal Power Commission (Docket No. G-13202) agreeing to an [fol. 39] unconditional moratorium on any rate increase for one year after December 31, 1963, plus an additional ten months thereafter subject only to certain conditions as to gas supply costs.

VII

If the divestiture in this proceeding of El Paso's Northwestern Division properties should result in any material reduction of the gas supply and gas reserves thereafter to be available to applicant or if it should result in any material increase in applicant's cost of gas purchased by it, applicant's competitive position would be severely damaged and the holders of its bonds, debentures and preferred stock would likewise be damaged through impaired ability of applicant to make the required interest, dividend and sinking fund retirement payments to such holders. The business of applicant would be severely curtailed, it would be less able to effectively serve its existing customers and might be rendered incapable of extending service to others, contrary to the public interest within the State of Washington and applicant's common stockholders would be damaged through the lessened value of the company.

VIII

In 1963 applicant, together with The Washington Water Power Company and El Paso Natural Gas Company commenced the exploration and testing of an underground structure in Lewis County, Washington to determine its suitability for underground storage of natural gas. This project has been conducted pursuant to agreement among the three companies whereby each has contributed one-third of the cost and is the owner of an undivided one-third interest in the project. At April 30, 1964, applicant's investment was approximately $290,000. It has not yet been determined whether or not this structure will prove to be a useable gas storage reservoir and applicant and the [fol. 40] other two companies are continuing to expend money for completion of the testing. Applicant has an immediate and direct interest in the oil and gas and storage leases for this area and in the improvements and facilities placed thereon and will be directly affected by whatever disposition is made of those properties as a part of the plan of divestiture herein.

IX

Inasmuch as the decision of the Supreme Court herein did not prescribe the method by which divestiture is to be accomplished, applicant is so situated as to be adversely affected by the details of disposition of the property herein which is subject to distribution or disposition by the court. The plan for divestiture must necessarily result in the creation of an entity having an as yet unknown capital structure, investment and gas supply, which will dictate to a large extent its ability to continue service under reasonable rates and practices as they affect the interest of applicant and its customers in the State of Washington, as well as the holders of its securities. The method of divestiture will establish conditions which the federal regulatory agency for all practical purposes must accept

and in turn will establish conditions under which applicant's rates and practices to customers within the State of Washington must be established. Applicant's customers and users in the State of Washington and the Washington Utilities and Transportation Commission which has regulatory powers over applicant will therefore be bound by any decision of this court establishing the method of divestiture.

X

There is no other party to the above-entitled proceeding which can adequately protect the particular interest of the applicant in that Pacific Northwest Pipeline Corporation [fol. 41] has been completely merged into El Paso Natural Gas Company and is therefore not in a position to protect its own interests or the interests of the public previously served by it in the State of Washington; El Paso Natural Gas Company may have interests in the disposition of assets presently subject to the jurisdiction of this court, which are in conflict with the interests of applicant; that while the United States acting by and through the Attorney General is properly characterized as the guardian of the public interest so far as the competitive aspects of anti-trust litigation and divestiture are concerned, applicant does not believe the position of the United States to be one of primary concern with many details involved in divestiture as they vitally affect the best interests of applicant and its customers from the standpoint of rates and service or the best interests of the holders of applicant's securities.

XI

Applicant anticipates that there will be many matters of major significance in any proposed plan of divestiture herein, all of which will be of direct concern to applicant and those whose interests it represents, including:

(1) What disposition will be made of El Paso's undivided one-third interest in the underground

storage project in Lewis County, Washington, and will El Paso or its successor by divestiture continue bound by the agreement between applicant, The Washington Water Power Company, and El Paso relating thereto?

(2) Will the successor in divestiture continue to be bound by El Paso's stipulation in Federal Power Commission Docket No. G-13202 providing for a moratorium on pipeline rate increases?

[fol. 42]

(3) Will the successor in divestiture assume and be bound by existing gas supply contracts between applicant and El Paso and will such successor have adequate continuing supplies and reserves of natural gas to fulfil such contracts?

(4) Will the successor in divestiture have an adequate and continuing supply and reserves of natural gas to meet the requirements of applicant and its consumers at applicant's anticipated rate of future growth?

(5) To which company, El Paso or the successor in divestiture, will the laterals constructed by El Paso after the merger belong?

(6) Which company, El Paso or the successor, will be entitled to the gas acquired in Canada after the merger which is transported into the United States at Kingsgate, British Columbia?

(7) Will there be any modification or impairment of the pre-merger contract between El Paso and Pacific Northwest regarding the importation of gas at Sumas, Washington, and the charge made with respect to such imported gas?

(8) Which company will take title to the Opal gasoline plant located near Opal, Wyoming?

(9) What disposition will be made of the gas reserves of the former Pacific Northwest Pipeline Corporation in the San Juan Basin and additional gas reserves in such Basin and elsewhere?

[fol. 43]

(10) Should the indebtedness for monetary advances made to the Belco Petroleum be retained by El Paso or transferred to the successor?

(11) How are any tax loss carryovers which may be applicable to Pacific Northwest or to El Paso's Northwest Division to be handled?

(12) What disposition will be made of the field sales of gas in the San Juan Basin which were made by El Paso to Pacific Northwest under El Paso Schedule X-1 prior to the merger?

XII

The granting of this petition will in no way broaden the issues before this court, nor will it unduly delay the proceedings, nor prejudice the adjudication of the rights of the original parties, or be in conflict with the policy and purposes of the statute under which the action was commenced.

XIII

No pleading setting forth a claim or defense is submitted herewith for the reason that all issues raised by the pleadings herein have been resolved and the remaining issues are directly within the equity jurisdiction of this court with regard to the method of divestiture, the corporate reorganization of El Paso Natural Gas Company, the formulation of a new corporate entity to succeed to the interest of El Paso in service to the Northwest area or the reconstituting of Pacific Northwest Pipeline Corporation, and the identification of assets subject to divestiture and their disposition. Subsequent to the decision of the

Supreme Court of the United States herein, no pleadings [fol. 44] or plans for divestiture have been filed by the principal parties hereto.

Wherefore, Applicant prays for an order of this Court permitting it to intervene in the above-entitled cause and to participate therein as a party in intervention in such cause.

Dated this 19th day of June, 1964.

Cartano, Botzer & Chapman, John W. Chapman, Attorneys for Applicant, Washington Natural Gas Company, 1415 Joseph Vance Building, Seattle, Washington 98101, Telephone: Area Code 206 MA. 3-6700.

A. W. Sandack, Local Counsel: Draper, Sandack & Saperstein, 606 El Paso Natural Gas Building, Second South at Third East, Salt Lake City 11, Utah, Telephone: Area Code 801 364-7831.

[fol. 45] Certificate of Service (omitted in printing).

[fol. 46]

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH
SALT LAKE CITY, UTAH

June 29, 1964

NOTICES OF HEARING ON JULY 8, 1964 FOR PROPOSALS FOR DIVESTITURE

To: William T. Thurman, Esq., U. S. Attorney, 200 Post Office & Courthouse Bldg., SLC; Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, SLC; Ray, Quinney and Nebeker, Suite 300, 65 South Main, SLC; Arthur H. Dean, Esq., Sullivan & Cromwell, 48 Wall Street, N. Y.; Leon M. Payne, Esq., 2200 Gulf Bldg., Houston 2, Texas; Gregory A. Harrison, Esq., Brobeck, Phleger & Harrison, 111 Sutter

Street, San Francisco, California; Richard W. Sabin, Esq., Asst. Attorney General, State of Oregon, Public Utility Commission, Salem, Oregon (97310); Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., SLC; James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington; Larry D. Ripley, Esq., Asst. Attorney General, State of Idaho, Boise, Idaho; Rawlings, Roberts & Black, Judge Bldg., SLC; Joseph S. Jones, Esq., Walker Bank Bldg., SLC.

Re: C 143-57

UNITED STATES OF AMERICA

vs.

EL PASO NATURAL GAS CORPORATION, et al.

Please Take Notice, that the above-entitled case has been set for Hearing on:

Proposals for Divesture pursuant to Mandate of the Supreme Court of the United States.

Before Honorable Willis W. Ritter on the 8th day of July, 1964 (Wednesday) at 10:00 a.m. at Salt Lake City, Utah.

Andrew John Brennan, Clerk, By: H. S., Deputy Clerk.

Arguments of counsel will not be taken down by the Court Reporter unless requested by counsel.

[fol. 47]

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

SALT LAKE CITY, UTAH

June 29, 1964

To: Cartano, Botzer & Chapman, 1415 Joseph Vance Bldg., Seattle (98101); Draper, Sandack and Saperstein, 606 El Paso Natural Gas Bldg., SLC.

Re: C 143-57

UNITED STATES OF AMERICA

vs.

EL PASO NATURAL GAS CORPORATION, et al.

Please Take Notice, that the above entitled case has been set for Hearing on:

Proposals for Divesture pursuant to Mandate of the Supreme Court of the United States.

Before Honorable Willis W. Ritter on the 8th day of July, 1964 (Wednesday) at 10:00 a.m. at Salt Lake City, Utah.

Andrew John Brennan, Clerk, By: H. S., Deputy Clerk.

[fol. 47a]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

C 143-57

UNITED STATES OF AMERICA; Plaintiff,

—v—

EL PASO NATURAL GAS CORPORATION, et al., Defendants.

Salt Lake City, Utah

Before: The Honorable Willis W. Ritter, Chief Judge.

Transcript of Proceedings—July 8, 1964

APPEARANCES:

For the Plaintiff: Jack Louis Lipson, Esq.

For the Defendants: Gregory A. Harrison, Esq., Dennis McCarthy, Esq.

[fol. 47b] The Court: El Paso Natural Gas. Let me see the file, Mr. Clerk.

Go ahead. You may proceed.

Mr. Lipson: Thank you, your Honor. My name is Jack Lipson, your Honor. I represent the Department of Justice.

The Court: What is your name?

Mr. Lipson: Jack Lipson. We are here to request that the proposed divestiture hearing be put over for a period of approximately ninety days, so that we can come into court with a definitive proposal to present before your Honor.

The Court: Well—

Mr. Lipson: It is my understanding, your Honor, that the El Paso Natural Gas Company will join in this request.

The Court: The Court said: "We direct the district court to order divestiture without delay."

Now, that opinion came down on the sixth of April, and the mandate came down on the sixth of April, dated April 6. It wasn't filed here until the fifth of May, thirty days later.

Mr. Harrison: May I make a report to the court, if your Honor please.

[fol. 47c] The Court: Yes, indeed. Surely.

Mr. Harrison: The El Paso Natural Gas Company has been devoting its energies almost exclusively to this problem since the time the judgment was entered in this court. It has been in weekly, almost daily, contact with the Department of Justice, with the Bureau of Internal Revenue, and with the representatives of the principal creditors in an attempt to put together a feasible plan of divestiture.

It seems clear, to begin with, and is clear to the company at least, that the first necessary step in the divestiture is to create a new company to take over the assets that will be devoted to the service in the Northwest States, that is to say, the assets to be divested by this court's decree, and such other assets as will be necessary to make of that company one able to carry on its public service duties and one that will permit the readjustment of debt, which is the greatest problem confronting the company.

As a *sine qua non* of any divestiture the problem of a debt of $900,000,000 secured of El Paso Natural Gas Company, a lien upon all of its assets, including the assets of the former Pacific Northwest, is the first obstacle to be taken care of. It would be totally impracticable to attempt to divest a company in the Northwest with a debt of $900,000,000.

The proposal which the company has been pursuing in [fol. 47d] an effort to bring a package to the Department

of Justice and to this court is to set apart the assets which seem appropriate to be vested in the new company, the total value of which is roughly estimated at $240,000,000, and to transfer from the El Paso Natural Gas Company $180,000,000 of debt to the new company, $145,000,000 approximately being in secured bonds and the balance in funded debentures. This would leave them an equity of some $60,000,000 of common stock.

The $900,000,000 of debt, secured debt, of El Paso is held by some one hundred investors, but fortunately two of the investors, the Equitable Assurance Society of the United States and the Metropolitan Life Insurance Company, own approximately one half of the debt. And, beginning in late April and throughout May and up to this time, the company's principal officials have been negotiating with these secured creditors to persuade them to accept, in lieu of $180,000,000 of secured debt of El Paso, $180,000,000 of secured debt of the new company and at the same time, of course, to absolve the new company from the $900,000,000 load of debt presently imposed upon it.

The company has made progress and believes it has tentative agreement with these two companies to proceed along these lines, although the detail is yet not sufficiently definite to present an agreement to this court.

[fol. 47e] Furthermore, after having once satisfied these principal debtors, it is necessary to go out and ask the balance of the holders of the debt to subscribe. This has been a long task, and without the accomplishment of this task the company knows not how it can proceed with a plan of divestiture.

It is contemplated that all of the assets of the old company will be transferred to the new company. It is contemplated that associated assets, by way of improvements, extensions, and laterals, which were constructed since the acquisition, will be transferred. It is contemplated that those gas resources which are naturally incident to the pipe line of the Pacific Northwest will be transferred.

In the last analysis it will, of course, be necessary to satisfy the holders of the funded debt, when they agree to separate the debt of the old and the new company, that a fair allocation of assets has been made to the Northwest so that it will be a vigorous, vital company, able to serve, and will be able to service its debt. And the same thing is true as to El Paso, because the same creditors will be consenting in respect to them to the transfer of the El Paso assets to the other company. And the ultimate aim of the company is to have both companies ready to proceed with business with the same ratio of reserves to market commitments, so that there can be no discrimina-
[fol. 47f] tion as between the companies.

The Department of Justice has been kept fully advised of all the steps taken. In addition to that, the company has indicated that it is prepared to proceed, as soon as its tax problems have been resolved, with a proposal concerning the ultimate disposition of the common stock.

And so the company, El Paso Natural Gas Company, comes to this court asking for approximately ninety days within which time they believe that they can present to this court a final package and a package which they are confident will be acceptable to the United States and to the public authorities of the various Northwest states.

That brings me, if it may please the court, to petitions for intervention which have been filed in this court with respect to the form of the decree. We do not conceive that this is a proper proceeding, proceeding in intervention. Once the case has been decided, the issues have been tried, and all that remains is the entry of judgment upon the order of the Supreme Court, which requires an excision from the assets of El Paso of the assets which it acquired from the Pacific Northwest.

We think the court is the authority for the decree. We think the parties are those represented by the Attorney General and counsel for El Paso.

However, although we think that this is inappropriate, we would suggest to this court, along with our motion for

[fol. 47g] a continuance, that the motions to intervene likewise be continued, for this reason: that the officers of the El Paso Natural Gas Company confidently believe that, when they have concluded their negotiations with the creditors of El Paso, they will be able to present a plan for divestiture which will meet with the approval of this court and also will meet with the approval of the public authorities of the Northwest states.

We submit the motion, if your Honor please.

Mr. Lipson: Your Honor, shortly after the Supreme Court handed down its decision the Department took the position that it must accomplish divestiture and the outcome would have to be a re-establishment of the Pacific Northwest Pipe Line Corporation as a viable and independent company with a proper allocation of the assets of the present combined company. We took the position that, in the first instance, at least, it would be El Paso's burden to come up with a proposed divestiture scheme that would satisfy the Department. I think this would be in conformance with the Supreme Court's order that divestiture be accomplished without delay, since any agreement that could be worked out between the Department and El Paso would necessarily preclude any litigation on that score.

So far there have been numerous meetings between representatives of the Department and representatives of El [fol. 47h] Paso, and we think that El Paso is in good faith working on a divestiture scheme. It has not yet jelled to a final position, as we understand it, and for that reason we do not think there is anything to present before your Honor this morning. For that reason we request the further delay.

The Court: Well, this was brought on this morning on my own motion, and the purpose of this hearing was to find out what you were doing and what you plan to do. And the court doesn't have any purpose at all in pushing you, attempting to have you do the impossible.

This is an enormous undertaking, really, of a $900,000,000 debt. Pacific Northwest Pipe Lines Company, the corporation, is now non-existent. The El Paso acquired all of its common stock, and El Paso also acquired all of its assets and assumed all of its liabilities, and that was a considerable time ago. And, while it is conceivable that you might be able to separate the physical assets, the pipe line, for example, from here to the Northwest, El Paso has refunded that debt over and over again, I suppose, over those years and now the assets of both corporations are security for that indebtedness. There are bonds and debentures, and I don't know what else. So it is a tremendous undertaking, and this court isn't going to be impatient at all about it.

I want to understand what we are doing as we go along. I wish you would keep me advised. I don't want you just [fol. 47i] to drop that scheme on my desk some morning without having an opportunity to come along with you on this. You are going to have to educate me. This is a new venture as far as I am concerned.

Of course, my idea was you shouldn't divest, but the Supreme Court had a different idea about that, so we are going to have to do it.

Your motions are granted.

Mr. Harrison: Does the court wish reports from the parties from time to time?

The Court: Well, I hate to do anything very formal about that. I am going to grant you the ninety days. If you need more time, why, of course, come in and talk to me about it. But it would be helpful to me if, as you proceed, you would, from time to time, report to me what you are doing, how you propose to accomplish this, so that the court will understand what it is all about eventually.

This is a rough kind of a job to have to do in the summertime, isn't it?

Mr. Harrison: Well, your Honor, counsel, as far as I am concerned, has not been very busy with this job. This is all

being done by the chairman of the board and the president of the company. They have really taken the stints.

The Court: Well, all right. I do hope you will talk to me about it now and then.

[fol. 47j] Mr. Harrison: We will, your Honor.

The Court: Keep me advised.

Mr. Lipson: Yes, sir.

The Court: Let me have some information as we go along, so I can study it, and it won't be a brand-new thing when the plan finally is submitted to us here.

It sounds to me as though it would be a very happy circumstance if you folks can get together on this.

Mr. Harrison: We are very confident we can, your Honor.

The Court: If the Department of Justice and the El Paso Natural Gas Company people can agree upon the plan, that is going to go a long way with me. If there is a difference between you, of course, I will have to decide it, but it will be a very happy result if you can reach some agreement about that. The court isn't going to be pushing this matter at all.

Mr. Harrison: Thank you.

The Court: You may have the ninety days, and I would be surprised if you can do it in ninety days. Maybe you can.

The Court back there is on vacation now. When they get back in October, I don't want to be in a fix where they send down another order.

[fol. 47k] All right.

Mr. Lipson: Thank you, your Honor.

Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 48]

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

C 143-57

Judge Ritter

UNITED STATES OF AMERICA

vs.

EL PASO NATURAL GAS CORP., ET AL.

MINUTES—July 8, 1964

This matter came on before the court at 10:00 a.m. for hearing on proposals for divesture pursuant to Mandate of the Supreme Court of the United States.

Jack Louis Lipson, Esq., appeared for the plaintiff. The following appearances were made on behalf of the defendants: Dennis McCarthy, Esq. and Gregory A. Harrison, Esq. for defendant, El Paso Natural Gas Corporation; Richard W. Sabin, Esq. and Calvin L. Rampton, Esq. representing the State of Oregon; John Chapman, Esq. and A. Wally Sandack, Esq. representing Washington Natural Gas Company; Brigham E. Roberts, Esq. and C. Keefe Hurley, Esq. representing Paradox Production Corporation; Joseph Jones, Esq. representing Mountain Fuel Company; and Paul B. Cannon, Esq. representing Pacific Western Pipeline Corporation.

Counsel jointly moved that the divesture hearing be continued for ninety (90) days in order that definite proposals may be submitted to the court and also moved that the hearing on all applications to intervene be continued. Motions granted.

The court directed that parties make interim reports on the progress of the negotiations.

cc: William T. Thurman, Esq., U. S. Attorney, 200 Post Office & Courthouse Bldg., SLC

Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, SLC

Ray, Quinney and Nebeker, Suite 300, 65 South Main, SLC

Arthur H. Dean, Esq., Sullivan & Cromwell, 48 Wall Street, N. Y.

Leon M. Payne, Esq., 2200 Gulf Bldg., Houston 2, Texas

[fol. 49] Gregory A. Harrison, Esq., Brobeck, Phlegar & Harrison, 111 Sutter Street, San Francisco, California

Richard W. Sabin, Esq., Asst. Attorney General, State of Oregon, Public Utility Commission, Salem, Oregon (97310)

Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., SLC

James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington

Larry D. Ripley, Esq., Asst. Attorney General, State of Idaho, Boise, Idaho

Rawlings, Roberts & Black, Judge Bldg., SLC

Joseph S. Jones, Esq., Walker Bank Bldg., SLC

Cartano, Botzer & Chapman, 1415 Joseph Vance Bldg., Seattle, Wash. (98101)

Draper, Sandack and Saperstein, 606 El Paso Natural Gas Bldg., SLC

C. Keefe Hurley, Esq., 60 State Street, Boston 9, Massachusetts

Paul B. Cannon, Esq., Continental Bank Bldg., SLC

Larry Pankonien, Esq., Box 2511, Houston, Texas

[fol. 50]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY, and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

THE WASHINGTON WATER POWER COMPANY, Intervenor.

APPLICATION FOR LEAVE TO INTERVENE—Filed July 20, 1964

Comes now the Washington Water Power Company, a corporation, of Spokane, Washington, and respectfully applies for leave to intervene in the above entitled proceeding pursuant to Rule 24 of the Federal Rules of Civil Procedure. This application is submitted on the following grounds and for the following reasons.

I.

The applicant is a Washington corporation engaged in the distribution of natural gas and electric power and energy within portions of Eastern Washington and Northern Idaho and, to a limited extent, is engaged in the distribution of electricity in two counties in Montana. Insofar as this application is concerned, applicant will limit its statements to its natural gas distribution business. Applicant is subject to the jurisdiction of the Washington Utilities and Transportation Commission and the Idaho

[File endorsement omitted]

Public Utilities Commission as to its rates, service, accounting and securities. Applicant holds appropriate certificates of convenience and necessity authorizing it to engage in the natural gas business in the area it serves. Applicant [fol. 51] serves approximately 29,000 natural gas customers and has gross assets of approximately $274,000,000.00 at the end of 1963.

II.

Applicant purchases all of its natural gas requirements from the defendant, the El Paso Natural Gas Company. Applicant has no other available source of natural gas. All of applicant's natural gas supplies are purchased from El Paso Natural Gas Company pursuant to contracts and written schedules filed with the Federal Power Commission. Applicant's firm contract for purchase of natural gas from El Paso Natural Gas Company has a combined daily contract demand of 544,825 therms.

III.

Applicant owns a one-third interest in a valuable asset which will be subject to any plan of divestiture submitted by El Paso Natural Gas Company and approved by this court. This asset is an underground natural gas storage project being developed jointly by the applicant, Washington Natural Gas Company of Seattle, Washington, and El Paso Natural Gas Company. The joint participation by these three companies in this project is on a one-third equal basis. The project is located in Southwestern Washington, adjacent to a portion of El Paso Natural Gas Company's main transmission line located in that area. The development and planned operation of the underground gas storage project is set forth in a written agreement between the three companies and filed with the Federal Power Commission. At the date of this application approximately 225,000,000 cubic feet of gas has been injected into the storage field. The F. P. C. has authorized the three

companies to inject up to 600,000,000 cubic feet for testing purposes. As of June 1, 1964 approximately $900,000.00 has been expended in the development of this project by [fol. 52] the three companies. It is anticipated that substantial additional expenditures by each of these three companies will be required prior to the time the project is determined to be feasible for the operation as an underground natural gas storage field. This project is of utmost importance to both the applicant and Washington Natural Gas Company. Continuation of the development and testing of this project under the three company contract by the successor of El Paso Natural Gas Company is most important to protect the investment heretofore made and for the successful completion of the project. Thus, applicant has a direct and substantial interest in a specific property subject to divestiture.

IV.

The applicant, in the distribution of natural gas, is subject to strenuous competition from other energy sources, primarily in the oil fuels industry. During 1963, approximately 56 per cent of applicant's sales of natural gas was to what is known as interruptible customers, many of whom could convert to other sources of fuel if there were any significant increase in the price of natural gas.

V.

Applicant's contractual relationships with El Paso Natural Gas Company may be adversely affected by the plan of divestiture which is to be submitted to and considered by the court for approval. The successor of El Paso Natural Gas Company in this divestiture proceeding must be a company which will be capable of supplying the natural gas requirements of the area and capable of continuing the development of the underground gas storage project referred to above under the terms and conditions as will be consistent with the best interests of the applicant, its customers and the holders of applicant's securities.

[fol. 53]

VI

Because of the contractual relationship between applicant and El Paso Natural Gas Company and, in particular, because of the joint development of the underground natural gas storage project referred to above, there is no other party in these proceedings which can adequately protect these interests of the applicant.

VII

Applicant anticipates that there will be many matters of substantial significance in any proposed plan of divestiture, all of which will be of direct concern to applicant and its customers, including, but not limited to:

(1) How will El Paso's one-third interest in the underground gas storage project referred to above be disposed of, and will the successor company in this divestiture be bound by the agreement between applicant, Washington Natural Gas Company, and El Paso Natural Gas Company?

(2) Will the successor in divestiture be bound by El Paso Natural Gas Company's agreement as set forth in F. P. C. Docket No. G-13202, providing for a moratorium on pipe line rate increases?

(3) Will the successor have the advantages of and be bound by existing gas supply contracts, and will the successor have the benefit of existing gas reserves to meet the present and projected gas requirements of applicant and its customers?

(4) Will the successor in divestiture be entitled to the gas acquired in Canada after the merger, which is transported into the United States at Kingsgate, British Columbia?

(5) Will the successor have the benefit of the [fol. 54] reserves of the Old Pacific Northwest Pipeline Corporation located in the San Juan Basin?

VIII

The granting of this application for intervention will not broaden the issues before this court, nor will it unduly delay these proceedings nor the adjudication of the rights of the principal parties, or be in conflict with the intent and purpose of the statute under which the action was originally commenced. Since no plan for divestiture has been submitted or filed by El Paso Natural Gas Company as of the date of this right to become fully aware of any proposed plan of divestiture unless intervention by the applicant is granted.

No pleading setting forth a claim or defense is submitted herewith for the reason that all issues raised by the pleadings herein have been resolved and the remaining issues are directly within the equity jurisdiction of this court with regard to the method of divestiture, the corporate reorganization of El Paso Natural Gas Company, the formulation of a new corporate entity to succeed to the interest of El Paso in service to the Northwest area or the reconstituting of Pacific Northwest Pipeline Corporation, and the identification of assets subject to divestiture and their disposition. Subsequent to the decision of the Supreme Court of the United States herein, no pleadings have been filed by the principal parties hereto.

Wherefore, applicant prays for an order of this court permitting it to intervene in the above entitled cause and to participate therein as a party of intervention.

Dated this 15th day of July, 1964.

Paine, Lowe, Coffin, Herman & O'Kelly, By Robert L. Simpson, Attorneys for Applicant, The Washington Water Power Company, 602 Spokane and Eastern Building, Spokane, Washington.

[fol. 55] Affidavit of Service (omitted in printing).

[fol. 56]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

C 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

STATE OF OREGON, ex rel. PUBLIC UTILITY COMMISSIONER OF OREGON, Intervener.

APPLICATION FOR LEAVE TO INTERVENE—Filed July 22, 1964

Comes now the State of California by and through its Special Counsel William M. Bennett and applies to the Honorable Court for leave to intervene in the above-entitled matter. This application is made on the grounds and for the reasons stated herein:

I

The State of California, through its regulated gas distributing public utility corporations, consumes great quantities of natural gas. The State of California is charged with the responsibility of assuring that natural gas is sold at lawful rates.

II

In excess of seventy per cent of all of the natural gas consumed within California is imported from out-of-state [fol. 57] sources and transmitted to California by regulated natural gas companies. The principal supplier to Cali-

[File endorsement omitted]

fornia is the El Paso Natural Gas Company. California pays approximately $300 million per year for natural gas.

III

The State of California has been active in the merger proceedings involving the defendants Pacific Northwest Pipeline Corporation and the El Paso Natural Gas Company. California opposed said merger before the Federal Power Commission being the only state affected so to do and appealed ultimately to the Supreme Court of the United States the decision of the Federal Power Commission authorizing said merger. (See *California* vs. *Federal Power Commission*, 369 U.S. 482, 8 L ed 54, and the history of the proceedings set forth therein.)

IV

California opposed the merger of these two natural gas companies on the basis that the acquisition of Pacific Northwest Pipeline Corporation constituted a violation of Section 7 of the Clayton Act and because of the keen interest of California in having competitive gas suppliers.

V

On April 6, 1964, the United States Supreme Court delivered its opinion on the appeal of the above-entitled matter wherein it was found that the El Paso Natural Gas Company unlawfully acquired the stock and assets of the Pacific Northwest Pipeline Corporation and directed the above-entitled Court to order divestiture without delay.

VI

Any judgment of this Court pertaining to divestiture will have a direct bearing and impact upon the State of [fol. 58] California, its gas distributing public utility corporations, its consumers and the general public of the State of California. It is important that California participate

in these proceedings before this Honorable Court to protect its proper interest in said proceedings.

VII

There is no other party herein which will protect adequately the interests of California and its people affected by these proceedings. California has a real interest in presenting to the Court its opinions coming from its long experience with these proceedings as to the most equitable manner consistent with the public interest in which divestiture should be made.

VIII

There are particular matters which affect California and other matters which affect other Western States which can only be presented on behalf of California through its representatives herein. Certain of those matters we are concerned with:

1. The manner in which production properties will be divested as between the Pacific Northwest Pipeline Corporation and the El Paso Natural Gas Company.
2. The impact of divestiture upon the El Paso Natural Gas Company, its capitalization, its ability to render adequate service and its ability to compete in the future for the growing California market.
3. Whether the divestiture plan of El Paso Natural Gas Company contemplates that the judgment of the Supreme Court of the United States in the proceedings be followed and that the original purpose of the prose- [fol. 59] cution under Section 7 of the Clayton Act be respected.

Additionally, other matters not set forth herein, some of which are of major consequence, will be presented to the Court by California or other parties and it is to the in-

terest of the people of California that they be represented in these proceedings and that the position of California be presented to the Honorable Court.

IX

The intervention of California in these proceedings will not unduly encumber them, it will not unduly burden the Court and indeed, in the opinion of California, our participation in here will be designed to be of assistance to the Court.

California has consistently opposed the merger of these two natural gas companies both by way of a direct appeal to the Federal Power Commission authorizing the merger originally, and subsequently, by way of participation in the latest proceedings before the United States Supreme Court.

Wherefore, California prays for an order of this Court permitting California to intervene in the above-entitled cause and to participate therein as a party in intervention in such cause.

Respectfully submitted,

William M. Bennett, Special Counsel for The People of the State of California.

Dated: July 20, 1964.

[fol. 60] *Duly sworn to by William M. Bennett, jurat omitted in printing.*

[fol. 61] Certificate of Service (omitted in printing).

[fol. 62]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

NORTHWEST NATURAL GAS COMPANY, Applicant for Intervention.

MOTION TO INTERVENE—Filed July 29, 1964

Comes now Northwest Natural Gas Company, a corporation, and respectfully moves the Court for an Order, pursuant to Rule 24 of the Federal Rules of Civil Procedure, permitting it to intervene in those proceedings before the Court in the above entitled action relating to the divestitute by El Paso Natural Gas Company of the properties acquired in the merger of that Company with Pacific Northwest Pipeline Corporation, upon the grounds and for the reasons hereinafter set forth.

This motion is not accompanied by a pleading setting forth a claim or defense for the reason that all of the issues raised by the existing pleadings have been finally resolved by the opinion of the United States Supreme Court delivered on April 6, 1964, and the matters remaining to be decided relate solely to the action to be taken by this Court with respect to the divestiture which the United States Supreme Court directed be ordered.

[File endorsement omitted]

I

Northwest Natural Gas Company is a public utility corporation organized and existing under the laws of the State of Oregon and is qualified and authorized to transact business as a foreign corporation in the State of Washington. [fol. 63] It is principally engaged in the business of distributing and selling natural gas in intrastate commerce in said states and in respect thereof is subject to this jurisdiction of the Public Utility Commissioner of Oregon and the Washington Utilities and Transportation Commission.

II

The area served by Northwest Natural Gas Company in said states encompasses approximately 7600 square miles, having a population of in excess of 1,100,000. Northwest Natural Gas Company has invested approximately $83,883,900 in plant property and other facilities for furnishing service and during the year ended May 31, 1964 distributed 504,284,000 therms of gas to an average of approximately 110,000 residential, commercial, industrial and institutional customers.

III

Prior to the merger of the parties defendant, Northwest Natural Gas Company entered into a 20 year contract with Pacific Northwest Pipeline Corporation for its firm gas requirements, and also contracted for certain additional gas purchases, pursuant to the latter's then approved rate schedules. All of the obligations of Pacific Northwest Pipeline Corporation under said contracts were assumed and performed by El Paso Natural Gas Company following the merger of said parties defendant, and all of Northwest Natural Gas Company's natural gas requirements are now purchased from El Paso Natural Gas Company under service agreements which require the use of the facilities and properties which are subject to divestiture by El Paso Natural Gas Company and which will thereafter become the facilities and properties of others.

IV

Northwest Natural Gas Company has no other available source of natural gas and, therefore, together with its utility customers, has a very material interest in the continued satisfactory performance of the aforesaid service agreements by the entity which will ultimately acquire ownership, management and control of the facilities and properties to be divested. Northwest Natural Gas Company is so [fol. 64] situated as to be adversely affected by the disposition of said facilities and properties, which are subject to the constructive control and disposition of this Court.

V

In its service areas Northwest Natural Gas Company is continually faced with vigorous competition in its sales of gas, particularly from the oil fuels industry and the electric industry. Since the rates charged by Northwest Natural Gas Company are substantially affected by the rates, practices and exactions of its pipeline supplier, if the divestiture in this proceeding should result in any material increase in Northwest Natural Gas Company's cost of purchased gas, its competitive position will be severely damaged. Northwest Natural Gas Company, along with certain other customers of El Paso Natural Gas Company, is presently protected against a rate increase by El Paso Natural Gas Company by a stipulation, filed with Federal Power Commission in Docket No. G-13202, containing an unconditional moratorium on any rate increase for one year after December 31, 1963, plus an additional ten months thereafter subject only to certain conditions as to El Paso Natural Gas Company's gas supply costs.

VI

Northwest Natural Gas Company and its utility customers are, therefore, vitally concerned with the details of any proposed plan of divestiture which may be considered

by this Court and which may have an affect upon the conditions under which Northwest Natural Gas Company's rates and practices are established. None of the existing parties to the above entitled proceeding can adequately represent the particular interest of Northwest Natural Gas Company, and it will be bound by the order of this Court with respect to said divestiture.

VII

The intervention of Northwest Natural Gas Company in these proceedings will not unduly delay or prejudice the [fol. 65] adjudication of the rights of the original parties hereto.

Dated this 29th day of July, 1964.

Harold W. Pierce, Attorney for Northwest Natural Gas Company, Applicant for Intervention, 735 S. W. Morrison Street, Portland, Oregon 97205, Telephone: Area Code 503, 226-4211.

Local Counsel:

Rex J. Hanson, Esq., Hanson and Baldwin, Kearns Building, Salt Lake City, Utah, Telephone: Area Code 801, 359-7611.

Counsel's Certificate to foregoing paper (omitted in printing).

[fol. 66] Certificate of service (omitted in printing).

[fol. 67]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION
Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS CO., and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants.

MOTION OF MOUNTAIN FUEL SUPPLY COMPANY TO INTERVENE—Filed July 31, 1964

Mountain Fuel Supply Company, a Utah corporation, moves the Court for an Order, pursuant to Rule 24 of the Federal Rules of Civil Procedure, permitting it to intervene in the proceedings before the Court in the above entitled action relating to divestiture by El Paso Natural Gas Company of properties and assets acquired by merger of that Company with Pacific Northwest Pipeline Corporation.

This Motion is submitted on the grounds and for the reasons hereinafter stated and is not accompanied by a pleading setting forth a claim or defense because all issues which are the subject of such pleadings have been heretofore finally determined and the remaining matters to be decided are concerned solely with how and to whom divestiture will be made.

I.

Mountain Fuel Supply Company is a public utility corporation organized in Utah and qualified to do business in

[File endorsement omitted]

[fol. 68] Utah, Wyoming, Colorado and Idaho. It is engaged in the production, transmission and distribution of natural gas and is subject to the jurisdiction of the Federal Power Commission with respect to its interstate activities and to the jurisdiction of the Public Service Commissions of Utah and Wyoming with respect to its intrastate activities within those respective states.

II.

On May 5, 1956, prior to consummation of the merger of the parties defendant, Mountain Fuel Supply Company contracted with Pacific Northwest Pipeline Corporation to purchase a minimum average of 50,000 Mcf. of natural gas per day pursuant to the latter's rate schedule PL-1, and for a period of not less than 20 years. Mountain Fuel Supply Company also arranged to make certain additional gas purchases from Pacific Northwest Pipeline Corporation pursuant to the latter's rate schedule XS-PL-1. Prior to said merger, on December 6, 1958, and on July 1, 1958, Mountain Fuel Supply Company entered into certain agreements with Pacific Northwest Pipeline Corporation pursuant to which the contracting parties gather certain volumes of gas for each other and thus avaid costly duplicating gathering facilities in the Big Piney-LaBarge gas producing area of Wyoming, and also exchange substantial quantities of gas thus making available a large additional supply of natural gas to the customers of Mountain Fuel Supply Company, which additional supply in 1963 aggregated 11,300,728,000 cubic feet of gas.

[fol. 69] III.

All of the obligations of Pacific Northwest Pipeline Corporation under the agreements described in the foregoing paragraph were assumed and performed by El Paso Natural Gas Company following consummation of the merger of that Company with Pacific Northwest Pipeline Corporation, and all of the said agreements require use of facili-

ties and properties which are subject to divestiture by El Paso Natural Gas Company and which will, therefore, become the facilities and properties of others.

IV.

Mountain Fuel Supply Company and its utility customers are vitally concerned in the continued satisfactory performance of the above agreements and in the maintenance of efficient management and moderate rates by the reconstituted entity which will assume ownership, management and control of the divested properties.

Mountain Fuel Supply Company should be permitted to intervene because there is no other party to the above entitled proceedings that can adequately protect its interest in the matter and it will be bound by such divestiture as may be accomplished with approval of the Court. Mountain Fuel Supply Company is in such a position by virtue of its above described contracts and relationships with El Paso Natural Gas Company as to suffer possible adverse effects by reason of distribution or disposition of the properties which are now subject to the divestiture which this Court will supervise.

[fol. 70] Dated this 31st day of July, 1964.

Respectfully submitted,

Ray, Rawlins, Jones & Henderson, Joseph S. Jones, C. E. Henderson, Attorneys for Mountain Fuel Supply Company, 800 Walker Bank Building, Salt Lake City, Utah.

Address of Mountain Fuel Supply Company: 180 East First South Street, Salt Lake City, Utah.

[fol. 71] Certificate of Service (omitted in printing).

[fol. 72]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

No. C 143-57

UNITED STATES OF AMERICA,

v.

EL PASO NATURAL GAS CORPORATION.

NOTICE OF CONFERENCE ON SEPTEMBER 17, 1964

Take Notice that the above-entitled case has been set for Conference at Salt Lake City, Utah, on Thursday, September 17, 1964, at 3:00 P. M. with Honorable Willis W. Ritter to report on the progress in the negotiations concerning the divestiture of Pacific Northwest Pipeline Company.

Date: September 10, 1964

Andrew John Brennan, Clerk, by H. S., Deputy Clerk.

To: William T. Thurman, Esq., U. S. Attorney, 200 Post Office & Courthouse Bldg., SLC; Jack Louis Lipson, Esq., Dept. of Justice, Washington, D. C.; Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, SLC; Arthur H. Dean, Esq., Sullivan & Cromwell, 48 Wall Street, N. Y.; Gregory A. Harrison, Esq., Brobeck, Phleger & Harrison, 111 Sutter Street, San Francisco, California.

[fol. 73]

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

Judge Ritter

C 143-57

UNITED STATES OF AMERICA,

—vs—

EL PASO NATURAL GAS CORP., et al.

MINUTES—September 17, 1964

This matter came on uncalendared at 3:00 p.m. in chambers. The court requested counsel to report to him on the progress in the negotiations concerning the divestiture of Pacific Northwest Pipeline Company. The following counsel were present: Paul Kayser, Esq.; Howard Boyd, Esq.; Gregory Harrison, Esq.; Dennis McCarthy, Esq.; Robert S. Daggett, Esq., and W. B. Warrenn, Esq.

AJB:

cc: Paul Kayser, Esq., Howard Boyd, Esq., Gregory A. Harrison, Esq., Brobeck, Phleger & Harrison, 111 Sutter Street, San Francisco, California; Dennis McCarthy, Esq., 65 South Main, Salt Lake City, Utah; Robert S. Daggett, Esq., 111 Sutter Street, San Francisco, California.

[fol. 74]

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

SALT LAKE CITY, UTAH

September 22, 1964

NOTICE OF HEARING ON OCTOBER 19, 1964 ON PROPOSAL FOR DIVESTITURE AND APPLICATIONS FOR LEAVE TO INTERVENE, ETC.

To: William T. Thurman, Esq., U. S. Attorney, 200 Post Office & Courthouse Bldg., SLC; Jack Louis Lipson, Esq., Dept. of Justice, Washington, D. C.; Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, Salt Lake City, Utah; Arthur H. Dean, Esq., Sullivan & Cromwell, 48 Wall Street, New York, New York; Gregory A. Harrison, Esq., Brobeck, Phlegar & Harrison, 111 Sutter Street, San Francisco, California; Ray, Quinney and Nebeker, Suite 300, 65 South Main, Salt Lake City, Utah; Leon M. Payne, Esq., 2200 Gulf Bldg., Houston 2, Texas; Richard W. Sabin, Esq., State of Oregon, Public Utility Commissioner, Salem, Ore.; Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., Salt Lake City, Utah; James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington; Keith Sohm, Esq., 301 State Capitol Bldg., Salt Lake City, Utah; Larry D. Ripley, Esq., Asst. Attorney General, State of Idaho, Boise, Idaho; Cartano, Botzer & Chapman, 1415 Joseph Vance Bldg., Seattle, Washington; Draper, Sandack and Saperstein, 606 El Paso Natural Gas Bldg., Salt Lake City, Brigham E. Roberts, Esq., 530 Judge Bldg., Salt Lake City, Utah; C. Keefe Hurley, Esq., 60 State Street, Boston 9, Massachusetts; Joseph S. Jones, Esq., Walker Bank Bldg., Salt Lake City, Utah; Paul B. Cannon, Esq., Continental Bank Bldg., Salt Lake City, Utah; Virgil H. Wedge, Esq., First Natl. Bank of Nevada, 1 East 1st St., Reno, Nevada; Larry Pankonien, Esq., Box 2511, Houston, Texas; Robert L. Simpson, Esq.,

Paine, Lowe, Coffin, Herman & O'Kelly, 602 Spokane and Eastern Bldg., Spokane, Washington; William M. Bennett, Esq., Public Utilities Comm., State of California, San Francisco, California; Harold W. Pierce, Esq., 735 S. W. Morrison Street, Portland, Oregon; Rex J. Hanson, Esq., Kearns Bldg., Salt Lake City, Utah; Richard B. Hooper, Esq., Jones, Grey, Kehoe, Hooper & Olsen, Norton Bldg., Seattle 4, Washington.

[fol. 75]

Re: C 143-57

UNITED STATES OF AMERICA,

—vs—

EL PASO NATURAL GAS COMPANY, et al.

Take Notice that the above-entitled case has been set for hearing at Salt Lake City, Utah, on Monday, October 19th, 1964 at 10:00 A.M. before Honorable Willis W. Ritter, on the following:

Proposals for Divesture pursuant to Mandate of Supreme Court of the United States.

Upon Application for leave to Intervene filed by the State of Oregon.

Upon Application for leave to Intervene filed by the State of Washington.

Upon Application for leave to Intervene filed by the State of Idaho.

Upon Application for leave to Intervene filed by Washington Natural Gas Company.

Upon Application for leave to Intervene filed by Washington Water Power Company.

Upon Application for leave to Intervene filed by the State of California.

Upon Motion to Intervene filed by Northwest Natural Gas Company.

Upon Motion to Intervene filed by Mountain Fuel Supply Company.

Upon Application for Leave to Intervene filed by Cascade Natural Gas Corporation.

Andrew John Brennan, Clerk, By D. Scott, Deputy Clerk.

[fol. 77]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

No. C 143-57.

UNITED STATES OF AMERICA,

v.

EL PASO NATURAL GAS COMPANY, et al.

FURTHER NOTICE OF HEARING ON OCTOBER 19, 1964 ON APPLICATION FOR LEAVE TO INTERVENE, ETC.

Take Notice that the above-entitled case has been set for hearing at Salt Lake City, Utah, on Monday, October 19th, 1964, at 10:00 A.M. before Honorable Willis W. Ritter, on Application for Leave to Intervene filed by Cascade Natural Gas Corporation; (together with other motions previously set).

Date October 8th, 1964

Andrew John Brennan, Clerk, By Deana H. Scott, Deputy Clerk.

To Richard B. Hooper, Esq., Jones, Grey, Kehoe, Hooper and Olsen, Norton Building, Seattle 4, Washington, and counsel as listed in notice dated 9-22-64 for hearing on above date.

[fol. 78]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

v.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

CASCADE NATURAL GAS CORPORATION, Intervenor.

APPLICATION FOR LEAVE TO INTERVENE—
Filed October 7, 1964

Cascade Natural Gas Corporation, a Washington corporation, respectfully moves the Court for an Order, pursuant to Rule 24 of the Federal Rules of Civil Procedure, permitting it to intervene in the proceedings before the Court in the above-entitled case relating to the divestiture by El Paso Natural Gas Company of the properties and assets acquired by it through the merger of said Company with Pacific Northwest Pipeline Corporation.

This motion is submitted on the grounds and for the reasons hereinafter set forth and is not accompanied by a pleading setting forth a claim or defense for the reason that all the issues which are the subject of such pleading have been heretofore finally determined by the opinion of the United States Supreme Court delivered on April 6, 1964, and the remaining matters to be decided are concerned solely with how and as to whom the divestiture which the

[File endorsement omitted]

United States Supreme Court directed to be ordered, will be made.

I

Cascade Natural Gas Corporation is a public utility or-
[fol. 79] ganized and existing under the laws of the State of Washington and qualified to do business and in good standing under the laws of the State of Oregon. It is engaged in the distribution and sale of natural gas in intrastate commerce in said states and is subject to the jurisdiction of the Washington Utilities and Transportation Commission, and the Oregon Public Utility Commissioner with respect to its activities within these respective states.

II

Cascade Natural Gas Corporation serves residential, commercial and industrial customers with natural gas in 62 communities in the States of Washington and Oregon, having an aggregate population in excess of 440,000. During the calendar year 1963 Cascade Natural Gas Corporation purchased 356,867,559 therms of natural gas, and its gross revenues amounted to $18,085,585. Total customers aggregated 36,309 during 1963 and said Company's investment in gross plant at the end of 1963 amounted to nearly $43,000,000., to which substantial additions have been made since December 31, 1963.

III

Prior to the merger of the defendants, Cascade Natural Gas Corporation entered into a 20 year contract with Pacific Northwest Pipeline Corporation for its firm gas requirements and also contracted for certain additional gas purchases, pursuant to the then approved rate schedules of Pacific Northwest Pipeline Corporation. All obligations under said contracts were assumed and performed by El Paso Natural Gas Company following the merger, and all of the requirements of Cascade Natural Gas Corporation are now purchased from El Paso Natural Gas Company

under Service Agreements which require the use of facilities and properties which are subject to divestiture by El Paso Natural Gas Company and which will thereafter become the facilities and properties of others.

[fol. 80] IV

Cascade Natural Gas Corporation has no other available source of natural gas, and its utility customers have a material and vital interest in the continued satisfactory performance of the aforesaid Service Agreements and in the maintenance of efficient management and moderate rates by the entity which will assume ownership, management and control of the facilities and properties which are to be divested. Cascade Natural Gas Corporation is in a position, by virtue of its contracts with and relationships with El Paso Natural Gas Company, to be adversely effected by the disposition or distribution of the said facilities and properties which are now subject to divestiture under the control and supervision of the Court.

V

In its service areas, Cascade Natural Gas Corporation continually faces vigorous competition from other energy suppliers, especially oil fuels and electricity. The rates charged by Cascade Natural Gas Corporation are substantially affected by the rates, practices and exactions of its supplier, so that if the divestiture in this proceeding should result in any material increase in the cost to Cascade Natural Gas Corporation of purchased gas, its competitive position would be severely damaged. During 1963, approximately 53% of gross revenues from sales of natural gas was from interruptible customers, many of whom might and could convert to other sources of fuel if there were any significant increase in the price of natural gas. Cascade Natural Gas Corporation is now one of several customers protected against rate increases by El Paso Natural Gas

Company by stipulation filed with the Federal Power Commission in Docket No. G-13202 containing an unconditional moratorium on any rate increase for one year after December 31, 1963 and for an additional 10 months thereafter, subject only to certain conditions respecting El Paso Natural Gas Company's gas supply costs.

[fol. 81] VI

Cascade Natural Gas Corporation should be permitted to intervene in this cause because there is no other party to the above-entitled proceedings that can adequately protect its interest in this matter, and it will be bound by such divestiture as may be accomplished with the approval of the Court.

VII

The intervention of Cascade Natural Gas Corporation in these proceedings will not unduly delay or prejudice the adjudication of the rights of the principal parties hereto, or be in conflict with the intent and purpose of the statute under which the action herein was originally commenced.

Wherefore, applicant, Cascade Natural Gas Corporation, prays for an Order of this Court permitting it to intervene in the above-entitled cause and to participate therein as a party in intervention.

Dated this 5th day of October, 1964.

Jones, Grey, Kehoe, Hooper & Olsen, By Richard B. Hooper, Attorneys for Applicant, Cascade Natural Gas Corporation, 1000 Norton Building, Seattle, Washington 98104, MAin 4-0900.

Address of Cascade Natural Gas Corporation: 222 Fairview Avenue North, Seattle, Washington 98109.

[fol. 82]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

v.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

CASCADE NATURAL GAS CORPORATION, Intervenor.

AFFIDAVIT IN SUPPORT OF PETITION TO INTERVENE—
Filed October 7, 1964

State of Washington,
County of King, ss.:

A. R. Mitchell, being first duly sworn, upon oath deposes and says:

1. That he is the duly elected and acting Secretary-Treasurer of Cascade Natural Gas Corporation, a Washington corporation, with principal place of business at 222 Fairview Avenue North, Seattle, Washington;

2. That he has read the Application of Cascade Natural Gas Corporation dated as of the 5th day of October, 1964, for Leave to Intervene in the above-entitled cause; that he knows the contents of said Application to be true to his own knowledge except as to those allegations made on information and belief, and as to those allegations, believes them to be true;

[File endorsement omitted]

3. That he makes this Affidavit for the purpose of supporting the said Application of Cascade Natural Gas Cor-
[fol. 83] poration and as a verification of the facts stated therein.

A. R. Mitchell

Subscribed and Sworn to before me this 5th day of October, 1964.

Dexter A. Washburn, Notary Public in and for the State of Washington, residing at Seattle. My commission expires Aug. 17, 1966.

[fol. 84] Certificates as to Service of Petition (omitted in printing).

[fol. 86]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

v.

EL PASO NATURAL GAS COMPANY, et al., Defendants.

MOTION OF THE FEDERAL POWER COMMISSION FOR LEAVE TO FILE STATEMENT, AMICUS CURIAE—Filed October 12, 1964

The Federal Power Commission hereby moves this Court for leave to file the attached Statement, *Amicus Curiae*. The Commission seeks to file a Statement herein not for the purpose of expressing a position on the antitrust aspects of any proposed plan of divestiture which may come before the Court but to advise the Court of the nature of Commis-

[File endorsement omitted]

sion proceedings which, pursuant to the requirements of Section 7 of the Natural Gas Act, 15 U.S.C. 717f, will necessarily follow any divestiture order which may be issued by this Court. In addition, the Commission's Statement suggests certain procedures which the Court may wish to consider incorporating in its decree which we believe might facilitate the performance of our mutual responsibilities with respect to any order of divestiture which may be forthcoming. We present our Statement in the hope that it will assist the Court in its further consideration of this matter.

Respectfully submitted,

Richard A. Solomon, General Counsel; Howard E. Wahrenbrock, Solicitor; Joel Yohalem, Attorney; Federal Power Commission.

Oct. 9, 1954.

[fol. 87]

STATEMENT OF THE FEDERAL POWER COMMISSION, AMICUS CURIAE

The Federal Power Commission is not a party to the instant litigation and does not seek to become one. It recognizes (1) that it does not have primary responsibility for the enforcement of the antitrust laws and their applicability to the defendant El Paso's acquisition of the stock of the former Pacific Northwest Pipe Line Co., *California* v. *Federal Power Commission*, 369 U.S. 482, and (2) that the Supreme Court has found that this acquisition violated Section 7 of the Clayton Act, 15 U.S.C. 18, and has given this Court the responsibility of framing an appropriate divestiture decree. *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651. However, the provisions of Section 7 of the Natural Gas Act, 15 U.S.C. 717f, requiring approval by the Commission before any natural gas company may commence or abandon any operations within the jurisdiction of the Commission, will still remain applicable with respect to the pipeline companies which will emerge as a result of any

approved plan of divestiture, and such pipelines, prior to being certificated to conduct business subject to the Commission's regulatory authority, must demonstrate that their proposed methods of operation are "required by the public convenience and necessity." Accordingly, while we are not here taking any position on the antitrust aspects of any plan of divestiture which may come before the Court, we are respectfully filing this statement, outlining our understanding of the nature of the related responsibilities of this Court and the Commission, and suggesting possible procedures by which they may be handled to our mutual satisfaction.

[fol. 88] Section 7(b) of the Natural Gas Act, 15 U.S.C. 717f(b), requires Commission "permission and approval" before a natural gas company may "abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities * * *." The permission and approval of the Commission may be obtained "after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future convenience and necessity permit such abandonment."

Section 7(c), 15 U.S.C. 717f(c), forbids entry upon "the transportation or sale of natural gas, subject to the jurisdiction of the Commission, * * * the construction or extension of any facilities therefor, or [the acquisition or operation of] any such facilities or extensions thereof, unless there is in force * * * a certificate * * * authorizing such acts or operations." Under Section 7(e) of the Act, 15 U.S.C. 717f(e), the issuance of a certificate under Section 7(c) requires (with exceptions not here relevant) that the Commission find "that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, con-

struction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity * * *." Moreover, pursuant to the express provisions of Section 7(e) the Commission is empowered to make the exercise of the rights granted under any certificate it issues subject to "such reasonable terms and conditions as the public convenience and necessity may require."

[fol. 89] The effect of the discharge of the Court's responsibilities for enforcement of the antitrust laws coupled with the Commission's discharge of its responsibilities under the Natural Gas Act is clear. Where an action has been filed under Section 7 of the Clayton Act, the federal courts have the responsibility for determining the consistency of a merged natural gas system with the standards of the antitrust laws. The Federal Power Commission is bound, in carrying out its certificate functions, to accept the court's determination as binding upon it, and cannot find that a judgment of violation, or a determination that divestiture is the necessary antitrust remedy, is outweighed by other factors going into its determination of whether a particular natural gas company meets the standards for certification under Section 7 of the Natural Gas Act. But, while the Commission thus cannot conclude that the public convenience or necessity would be better served without divestiture, it may upon consideration of the certificate applications resulting from an order of divestiture, condition any approval thereof upon the making of such modifications as it deems essential to insure that the operations of the pipelines to be certificated will in fact meet the public convenience and necessity standard of the Natural Gas Act.[1]

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[1] In the unlikely event that no such conditions could make the proposed pipeline projects conform to the minimum standards of the Natural Gas Act, or the applicants refuse to accept the Commission's conditions (and are not ordered to do so by the Court), a Commission refusal to issue the appropriate certificates might require further consideration by the Court of other methods of divestiture. We see no reason for anticipating that this situation is likely to eventuate here. On the contrary, we would expect that

[fol. 90] There is no prior case in which the federal courts and the Federal Power Commission have had the problem of accommodating their interrelated responsibilities where divestment of previously merged facilities has been ordered. However, two closely analogous situations, both recent, involving the Federal Reserve Board and the Federal Communications Commission, support the legal position set out above and, in our opinion, point the way to what may be the most appropriate procedures to be followed by the Court and the Commission in bringing the present case to a prompt and mutually agreeable conclusion. The first of these two cases is *United States* v. *Firstamerica Corp.*, Civil Action No. 38139, D. C. Calif., (Northern Dist., Southern Div.). There the Federal Reserve Board had approved a merger of two California banks pursuant to the provisions of Section 3(a)(2) of the Bank Holding Company Act, 12 U.S.C. 1843. See 45 Federal Reserve Bulletin 134. The United States subsequently brought an action under Section 7 of the Clayton Act,[2] and after a motion to dismiss had been denied by the District Court and a motion for leave to file a petition for certiorari denied by the Supreme Court, *Firstamerica Corp.* v. *United States*, 361 U.S. 928, a consent settlement was agreed to between the United States and the defendant, and approved by the Court.

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this Court can approve a plan of divestiture which, at least in its general outlines, will be consistent with the standards of the Natural Gas Act as well as the Clayton Act, and that any conditions that the Commission might feel obligated to impose as a condition precedent to certificating the resulting pipelines will not cause any substantial problems for the Court.

[2] While the Federal Reserve Board, unlike the Federal Power Commission, has authority under Section 11 of the Clayton Act to enforce Section 7 of that Act (see 15 U.S.C. 21), Section 7 does not provide that transactions consummated pursuant to authority of the Federal Reserve Board are immunized from prosecution under that section. In any event, in the *Firstamerica* case, the Board, while making a finding that the merger did not violate Section 7, had not followed the procedure prescribed by Section 11 for carrying out its responsibilities for enforcing the antitrust laws.

Under the stipulation and order signed by Judge Wollenberg on September 30, 1960 (a copy of which is attached [fol. 91] hereto as Appendix A), a detailed plan of divestiture was worked out, differing significantly from a mere restoration of the *status quo ante*. However, the parties and the court expressly recognized that "action by the Federal Reserve Board under Public Law 86-463 as well as under the Bank Holding Company Act would be required to carry out the various banking steps contemplated." The Court's order, accordingly, approved a procedural plan of action under which the defendant bank would proceed with the necessary applications before the Board. The United States agreed not to oppose the applications before the Board and to comment fully on all relevant matters to the extent its views were requested by the Board. It agreed also that if the banks involved obtained approvals of their applications from the Board "so that they are in a position to carry out substantially the program outlined above it would dismiss the complaint. The necessary approval of the Board was thereafter obtained. See 47 Federal Reserve Bulletin 157 ff.

[fol. 92] In the other case (*United States* v. *Radio Corporation of America, et al.*, Civil Action No. 21,743 (E.D.Pa.)), the Federal Communications Commission had approved the defendants' acquisition of a radio and television station in Philadelphia but the United States subsequently brought an action charging that the acquisition violated Section 1 of the Sherman Act. As in the present case, the Supreme Court held that the Commission's approval did not immunize the transaction from prosecution under the antitrust laws. *United States* v. *Radio Corporation of America*, 358 U.S. 334.[3] The case was remanded to the District Court

[3] The Court held that the Federal Communications Commission, like the Federal Power Commission here, had no primary responsibility for enforcement of the antitrust laws in passing upon broadcast station transfer applications under Section 310(b) of the Communications Act, and its approval thus could not immunize an acquisition from subsequent challenge in the United States.

for trial on the merits, but prior to such time the parties agreed to entry of a consent judgment. The final judgment of the District Court entered on September 22, 1959 (a copy of which is attached as Appendix B) is a fairly complex document but insofar as divestiture is concerned merely provides (in Sections V and VI) that the defendants are directed to "sell, exchange, or otherwise dispose of" the two Philadelphia stations to persons not affiliated with the defendant and that prior to any application to the Federal Communications Commission to approve the transfer, pursuant to the provisions of Section 310(b) of the Communications Act, 47 U.S.C. 310(b), the defendants would give advance notice to the United States and the Court, thus permitting a Court determination whether the proposed mode of divestment is consistent with the other terms of the decree.

The decree also provided for retention of jurisdiction by the District Court to enable any parties to the decree to apply for such further orders as might be necessary for carrying out the decree. This provision is presently being implemented since, after a proposed plan of divestiture [fol. 93] had been agreed to by the United States and the District Court, the Federal Communications Commission, after hearing, refused to authorize the proposed assignment and directed instead that the stations be retransferred to their original owner (with that party in turn transferring the stations it had acquired from the defendants back to them). See 33 U.S. Law Week 2080.

While both of the above cases represent situations in which there was no final judgment of violation of the antitrust laws prior to the entry of the Court's order of divestiture, we do not believe this distinction is material to the problem at hand. More significantly, both of the decrees recognized, as we believe this Court should, that agency action was necessary before the Court's divestment order could be implemented and that the agency had an independent responsibility under its enabling act which

might require modification of the applications placed before it as a result of the Court's order. The two orders also represent different approaches to the question of how detailed a plan of divestiture should be approved by the Court prior to its submission to the regulatory agency. As to this question, we believe that if this Court were to determine that a particular type of divestiture plan was an appropriate or preferable means of remedying the antitrust violation, it would be feasible to direct the defendant to file applications with the Commission, consistent with a general outline of the approved method of divestiture, with the Court, of course, retaining jurisdiction to consider the continuing appropriateness of the antitrust relief as a result of any conditions which might be imposed by the Commission in approving the applications. We suggest that this approach might well constitute the best way for expedi- [fol. 94] tiously arriving at a mutually satisfactory solution of our separate responsibilities in the shortest period of time.

Respectfully submitted,

Richard A. Solomon, General Counsel; Howard E. Wahrenbrock, Solicitor; Joel Yohalem, Attorney.

Federal Power Commission, Washington, D.C., 20426.

[fol. 95]

APPENDIX A TO STATEMENT

[Stamp—Original—Filed—Sept. 30, 1960—Clerk, U.S. Dist. Court—San Francisco]

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 38139

UNITED STATES OF AMERICA, Plaintiff,

v.

FIRSTAMERICA CORPORATION, Defendant.

Stipulation and Order

It Is Stipulated by and between the parties hereto, subject to the approval of the court, that

1. The letter of Gerhard A. Gesell dated March 28, 1959 addressed to Robert A. Bicks filed as a part of this record pursuant to stipulation dated March 31, 1959 shall no longer be considered binding on the defendant.

2. The letter from the Department of Justice to defendant Firstamerica Corporation dated September 27, 1960 attached hereto, shall be filed herein as part of the record in this case and further action in this proceeding (includ-
[fol. 96] ing the hearing now set for Monday, October 10, 1960, on the motion of the defendant for an order transferring this cause to the Southern District of California) shall be stayed for 90 days provided that if the appropriate applications are made to the Federal Reserve Board as contemplated by said attached letter within that time the pro-

ceeding shall continue to be stayed until final action by the Board on said applications.

Dated: September 30, 1960.

Lyle L. Jones, Jr., Attorney for Plaintiff.

Gerhard A. Gesell, Covington & Burling, 701 Union Trust Building, Washington 5, D. C.;

Homer I. Mitchell, O'Melveny & Myers, 433 South Spring Street, Los Angeles 13, California;

Christopher M. Jenks, Orrick, Dahlquist, Herrington & Sutcliffe, 405 Montgomery Street, San Francisco 4, California;

By Christopher M. Jenks, Attorneys for Defendant.

September 30, 1960.

So Ordered: Albert C. Wollenberg, District Judge.

[fol. 97]

ATTACHMENT TO LETTER

UNITED STATES DEPARTMENT OF JUSTICE

Washington, D. C.

September 27, 1960

RAB:GDR
60-0-37-287

Firstamerica Corporation
600 South Spring Street
Los Angeles 14, California

Gentlemen:

This will refer to our discussions concerning certain applications to be made to the Federal Reserve Board under the provisions of Public Law 86-463 and the Bank Holding Company Act.

A. It is our understanding that California Bank and First Western will propose to the Federal Reserve Board that First Western and California Bank be permitted to merge as soon as practicable after Federal Reserve Board approval. In the application to the Federal Reserve Board for approval of the merger Firstamerica and the merging banks will agree that promptly after such approval, subject to obtaining necessary further approvals under applicable Federal and state banking laws and regulations which Firstamerica shall make all reasonable efforts to obtain, and in accordance with such approvals to cause to be established New Bank, a banking corporation to be organized under the laws of the State of California. New Bank shall be organized, operated and subsequently divested in accordance with the following which Firstamerica will also agree to undertake by appropriate provisions in applications made to the Federal Reserve Board. Firstamerica will

(1) Organize and place in operation New Bank with the right to operate under the name of First Western Bank and Trust Company.

(2) Furnish New Bank with adequate management and personnel and provide and maintain adequate capital satisfactory to the appropriate banking authorities.

(3) Cause to be transferred to New Bank.

[fol. 98] (a) All First Western's right, title and interest to each of the banking offices listed in Schedule A attached hereto, together with all of the deposits, loans and other banking business of such offices and

(b) All rights held by First Western under the new branch applications listed in Schedule B attached hereto with respect to the establishment and operation of additional banking offices at the locations specified in such applications.

(4) Acquire and hold until disposed of in accordance with this proposal a majority of the stock of New Bank, and, while so holding, promote the development of the business of New Bank and its establishment as a sound banking enterprise capable of continued successful operation after the required divestiture is accomplished.

(5) After New Bank has been in operation for two years, take such steps as may be necessary to accomplish through one or more transactions a prompt divestiture of its stock or the assets of New Bank upon terms satisfactory to Firstamerica and after establishing to the satisfaction of the appropriate federal and state banking authorities that the financial condition of New Bank, its prospects and its management are such as reasonably will insure its continued successful operation after the required divestiture.

(6) If divestiture of the stock or assets of New Bank has not been made effective pursuant to paragraph (5) above, then within a six-year period of the date of the approval by the Federal Reserve Board of the merger and Firstamerica's acquisition of the majority of the shares of New Bank, Firstamerica will distribute the stock of New Bank to the stockholders of Firstamerica.

B. Firstamerica further represents that during the period prior to the divestiture of New Bank it will not:

(1) Actively solicit or otherwise attempt to bring about the transfer of any deposits, loans, customers or banking business of the banking offices of New Bank to the other banking offices operated by First Western or California Bank, provided that Firstamerica, First Western and California Bank may engage in customary promotional or advertising activities and may acquire in the ordinary course of business deposits, loans, customers or banking business of New Bank.

(2) Take any action to prevent or impede the establishment or operation by New Bank of additional banking of-

fices at the locations specified in and covered by the new branch applications listed in Schedule B attached hereto, [fol. 99] provided however, that Firstamerica and New Bank may exercise sound business judgment as to the establishment of or the time of establishment of additional branches at any of said locations.

C. After Firstamerica shall have divested itself of its stock or the assets of New Bank, no director, officer, or employee of Firstamerica or of any of its subsidiaries shall at the same time be a director, officer or employee of New Bank. Firstamerica will not re-acquire any portion of the stock or assets of New Bank after divestiture has been made effective, except as specific assets may be acquired by a subsidiary of Firstamerica in the ordinary course of business and except as shares of the stock of New Bank may be acquired by a subsidiary of Firstamerica (a) in good faith in a fiduciary capacity, or (b) in the regular course of securing or collecting a debt contracted in good faith, provided that any such shares acquired in securing or collecting any such contracted debt shall be disposed of within two years of the date on which they were acquired and shall not be voted by or on behalf of Firstamerica.

The above provisions represent in substance the terms of a consent settlement of the pending litigation which has been discussed between the Department of Justice and Firstamerica. In the course of discussions with counsel for Firstamerica it was recognized that action by the Federal Reserve Board under Public Law 86-463 as well as under the Bank Holding Company Act would be required to carry out the various banking steps contemplated. Firstamerica is proceeding with the necessary applications to the Board. If approvals under the appropriate banking laws are obtained by Firstamerica and the banks involved so that they are in a position to carry out substantially the program outlined above, the United States will, within 30 days after such approvals have been given, dismiss the complaint

filed March 30, 1959. The United States will not oppose the applications which will be made to the Board but intends to comment fully upon all relevant factors when its views are requested by the Board.

Sincerely yours,

Robert A. Bicks, Assistant Attorney General, Antitrust Division.

[fol. 100]

SCHEDULE A

PROPOSED NEW BANK

$500,000,000 DEPOSITS—65 OFFICES

DECEMBER 31, 1959

City	*Address*	*Total Deposits*
Los Angeles and Orange Counties		
Los Angeles, Main	556 South Spring Street	$ 58 300 000
Los Angeles, Corbin Village	19740 Ventura Boulevard	1 200 000
Los Angeles, Westwood Village	1037 Broxton Avenue	4 500 000
Los Angeles, Pico-Westwood	10820 West Pico Boulevard	700 000
Los Angeles, Crenshaw Center	3772 West Santa Barbara Avenue	3 200 000
Los Angeles, Watts	1600 East 103rd Street	5 400 000
Alhambra	44 West Main Street	5 500 000
Alhambra, Ninth & Valley	855 West Valley Boulevard	7 600 000

City	*Address*	*Total Deposits*
Arcadia	1155 West Huntington Drive	6 000 000
Azusa	6325 North Citrus Avenue	2 000 000
Bellflower	16824 South Bellflower Boulevard	11 500 000
Compton	1701 North Long Beach Boulevard	700 000
Covina	200 East Rowland Avenue	1 100 000
Lakewood	5240 Clark Avenue	1 000 000
Long Beach	130 East First Street	14 700 000
Long Beach, Pacific	2200 Pacific Avenue	8 500 000
Pasadena, Main	587 East Colorado Boulevard	30 700 000
Pasadena, Colorado-Rosemead	30 South Rosemead Boulevard	9 300 000
Pasadena, Colorado-Virginia	2562 East Colorado Boulevard	7 200 000
Pasadena, Garfield	34 South Garfield Avenue	9 600 000
Pomona	1095 North Garey Avenue	1 100 000
San Marino	2359 Huntington Drive	4 700 000
Sierra Madre	100 W. Sierra Madre Boulevard	7 300 000
Temple City	9635 East Las Tunas Drive	9 100 000

City	*Address*	*Total Deposits*
Torrance	24002 Hawthorne Avenue	2 000 000
Garden Grove	12976 South Euclid Avenue	12 700 000
Santa Ana, Main	102-104 West Fourth Street	45 200 000
Santa Ana, 17th & Main St.	1602 North Main Street	7 100 000
Stanton	11051 Stanton Avenue	2 300 000
Tustin	105 West Main Street	4 400 000
Westminster	7751 Westminster Avenue	4 500 000
31 Offices		$289 100 000

[fol. 101]

Northern California Area		
Sacramento, Country Club Plaza	3509 El Camino Avenue	$ 700 000
Greenville	115 Crescent Street	2 000 000
Orland	301 Walker Street	1 600 000
Oroville	2425 Myers Street	2 500 000
Fairfield	1127 Texas Street	4 900 000
5 Offices		$ 11 700 000

City	*Address*	*Total Deposits*
San Francisco Bay Area		
San Francisco, Mission	Mission and 21st Streets	$ 40 900 000
San Francisco, Park-Presidio	Clement Street at 7th Ave.	21 900 000
San Francisco, Fillmore	1528 Fillmore Street	6 600 000
Oakland, Telegraph	4900 Telegraph Avenue	12 900 000
Oakland, Fruitvale	3136 East Fourteenth Street	8 800 000
Oakland, Montclair	2023 Mountain Boulevard	7 000 000
San Lorenzo	550 Via Mercado	8 700 000
San Mateo	66 Thirty-First Avenue	2 900 000
Los Altos, Rancho	600 Los Altos Rancho	6 500 000
Daly City	30 Westlake Court	4 600 000
Alvarado	1014 Levee Street	3 600 000
Castro Valley	3396 Castro Valley Boulevard	3 600 000
Crockett	891 Loring Avenue	6 300 000
Pinole	2361 San Paolo Avenue	2 400 000
Niles	37611 Niles Boulevard	7 100 000
Lafayette	3583 Mount Diablo Boulevard	7 500 000
16 Offices		$151 300 000

[fol. 102]

City	*Address*	*Total Deposits*
San Joaquin Valley Area		
Fresno, Mayfair Center	1722 North First Street	$ 2 300 000
Bakersfield, Brundage Chester	1615 Brundage Lane	3 200 000
Newman	O and Fresno Streets	4 600 000
Riverdale	3494 Mt. Whitney Avenue	3 200 000
Tehachapi	113 F Street	2 500 000
Crows Landing	Fifth and G Streets	4 000 000
Corcoran	1045 Whitley Avenue	6 800 000
Sanger	1320 Seventh Street	1 700 000
Patterson	Del Puerto Ave. and N. 3rd St.	3 000 000
Orosi	12790 El Monte Way	3 700 000
10 Offices		$ 35 000 000
Other Southern California		
Beaumont	385 East Sixth Street	$ 5 200 000
Moorpark	95 High Street	2 700 000
Santa Barbara, San Roque	29 W. Calle Laureles	5 200 000
3 Offices		$ 13 100 000
Grand Total—65 Offices		$500 200 000

[fol. 103]

SCHEDULE B

APPLICATIONS TO BE ALLOCATED TO PROPOSED NEW BANK

Permission Granted and Pending to Establish Branch Offices

First Western Bank and Trust Company

Date of Permission	*Location of Branch*
6/21/56 *	El Dorado Shopping Center, Fullerton
11/16/56 *	Vic. Market & Kelso Streets, Inglewood
8/28/57 *	North Beach District, San Francisco
9/11/57 *	6th & Flower Streets, Los Angeles
11/22/57 *	On Wilshire Blvd. Approx. 120 ft. east of S.W. Corner of Wilshire Blvd. & McCarthy Vista (directly across from Crescent Heights Blvd.) Los Angeles
3/ 5/58 *	Downtown Business District (Plumas St.) Yuba City
6/26/58 *	Downtown Van Nuys
9/10/58 *	Downtown Business District, Red Bluff
9/10/58 *	Vicinity Intersection Abrego & Fremont Streets, Monterey
10/ 8/59	Downtown Section, Glendale

* Permission extended (Permission expires in 6 months unless extended.)

[fol. 104]

APPENDIX B TO STATEMENT

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 21,743

UNITED STATES OF AMERICA,

Plaintiff,

v.

RADIO CORPORATION OF AMERICA AND NATIONAL BROADCASTING COMPANY, INC.,

Defendants.

Final Judgment.

Plaintiff, United States of America, having filed its complaint herein on December 4, 1956; the defendants having filed their answer to the complaint, denying the substantive allegations thereof; the Supreme Court of the United States having rendered its opinion with respect to the third, fourth and fifth defenses raised by defendants' answer, as reported in *United States v. Radio Corporation of America, et al.*, 358 U. S. 334 (1959); and plaintiff and the defendants by their respective attorneys having severally consented to the entry of this Final Judgment without trial or finding on any issue of fact herein, without adjudication by this Final Judgment of any issue of law herein, and without this Final Judgment constituting evidence or an admission by either of them in respect to any such issues;

Now, THEREFORE, before any testimony has been taken, without trial or finding on any issue of fact herein, without adjudication by this Final Judgment of any issue of law

herein, and upon consent of the parties as aforesaid, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

[fol. 105] I.

The Court has jurisdiction of the subject matter of this action and of the parties hereto. Defendants having agreed, solely in order to permit entry of this Final Judgment, to waive the defense asserted by them that the complaint fails to state a claim upon which relief may be granted, the Court adjudges that the complaint states claims upon which relief may be granted against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, as amended.

II.

As used in this Final Judgment:

(A) "Person" means any individual, partnership, corporation, association or other legal entity;

(B) "NBC" means the defendant National Broadcasting Company, Inc.;

(C) "RCA" means the defendant Radio Corporation of America;

(D) "WRCV-TV" and "WRCV" mean, respectively, the television and the standard broadcast stations presently owned by NBC in Philadelphia;

(E) "NBC network affiliation agreement" means an agreement between NBC and the owner of a television broadcast station for affiliation of the station with the television network of NBC;

(F) "Broadcast station" means a station licensed by the Federal Communications Commission in the television

or standard broadcast band transmitting signals intended to be received by the general public;

(G) "National spot representation" means representation of a television broadcast station (other than such a station owned directly or indirectly by NBC or RCA) in sales by such station of nonnetwork advertising to national advertisers;

(H) "Television network" means an organization which provides interconnection with, and a national program service to, television broadcast stations not owned by such organization and which sells advertising time to national advertisers in connection with such programs; and

(I) "Market area" means a metropolitan area as defined by the United States Bureau of the Budget in its publication dated June 1959 entitled "Standard Metropolitan Statistical Areas"; if new issues of such publication replace the June 1959 issue, the most recent issue shall be used. To determine the population rank of a market area, the population statistics in the most recent issue of "Survey of Buying Power", a publication of the magazine "Sales Management", shall be used. A broadcast station shall be considered to be in a market area if the transmitter of such station is located within a radius of twenty-five miles from the main post office of the principal city in such area.

III.

The provisions of this Final Judgment applicable to either defendant shall apply to such defendant and to each of its subsidiaries, officers, directors, employees, agents, successors and assigns, and to all other persons in active concert or participation with either such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

[fol. 106] IV.

NBC, and RCA during any period of time when it directly or indirectly controls or has a substantial ownership interest in a television network, are each enjoined and restrained from:

(A) Coercing or attempting to coerce any person to sell or otherwise transfer any ownership interest in any broadcast station to either defendant, or to any person directly or indirectly controlled by either defendant or in which either defendant directly or indirectly has a substantial ownership interest, by terminating or threatening to terminate or refusing or threatening to refuse to enter into, an NBC network affiliation agreement with any other television broadcast station controlled by the same person or in which said person has a substantial ownership interest;

(B) Acquiring directly or indirectly any substantial ownership interest in any television broadcast station in the market area of New York, Chicago, Los Angeles, Detroit, Boston, San Francisco, or Pittsburgh, unless

(1) defendants shall have given written notice of the proposed acquisition to plaintiff, affording plaintiff opportunity to apply to this Court within thirty days after such notice for a determination by the Court as provided in clause (2) hereof, and

(2) if plaintiff shall have so applied, the Court shall have determined that the consent of the other party to the proposed acquisition was not obtained by acts or conduct of NBC or RCA relating in any way to the negotiations for the proposed acquisition, which acts or conduct constitute either (a) an unreasonable restraint of trade (as to which issue plaintiff shall have the burden of proof) or (b) a violation of subsection (A) of this Section IV (as to which issue the defendants shall have the burden of proof);

Provided, however, that the shifting of a television broadcast station from one channel of the television broadcast band to another channel in the same market area, when such shifting results from a change in allocations by the Federal Communications Commission, shall not be deemed to be the acquiring of an ownership interest in a television broadcast station within the meaning of this subsection (B); and, *Provided further,* that any party hereto may at any time upon ten days' written notice to the other parties apply to this Court for a modification of the list of the seven market areas specified in this subsection (B), when the list specified, with Philadelphia included, no longer represents the first eight market areas in the United States in terms of population of the respective areas; and

(C) Undertaking the national spot representation of any television broadcast station other than those listed on Exhibit A hereto unless

(1) defendants shall have given written notice of the proposed spot representation to plaintiff, affording plaintiff opportunity to apply to this Court within thirty days after such notice for a determination by the Court as provided in clause (2) hereof, and

(2) if plaintiff shall have so applied, the Court shall have determined that NBC has not coerced the owner of such station to engage NBC for the national spot representation of the station by terminating or threatening to terminate or refusing or threatening to refuse to enter into, an NBC network affiliation agreement with the station sought to be represented or with any other television broadcast station controlled by such owner or in which such owner has a substantial ownership interest, defendants having the burden of proof.

[fol. 107]

V.

Defendants are ordered and directed, on or before December 31, 1962, to sell, exchange or otherwise dispose

of all right, title and interest in WRCV-TV and WRCV to a person or persons not controlled directly or indirectly by either defendant and in which neither defendant has any substantial ownership interest.

Such disposition, if accomplished by exchange, shall be an exchange for a station or stations not in the Philadelphia market area and such exchange shall not be effected unless

(1) defendants shall have given written notice of the proposed exchange to plaintiff, affording plaintiff opportunity to apply to this Court within thirty days after such notice for a determination by the Court as provided in clause (2) hereof, and

(2) if plaintiff shall have so applied, the Court shall have determined that the consent of the other party to the proposed exchange was not obtained by acts or conduct of NBC or RCA relating in any way to the negotiations for the proposed exchange, which acts or conduct constitute either (a) an unreasonable restraint of trade (as to which issue plaintiff shall have the burden of proof) or (b) a violation of subsection (A) of Section IV of this Final Judgment (as to which issue the defendants shall have the burden of proof).

If such disposition is accomplished otherwise than by exchange, defendants shall give plaintiff written notice of such proposed disposition at least thirty days prior to filing with the Federal Communications Commission any application for the Commission's consent to such disposition.

NBC and RCA are prohibited from acquiring any ownership interest in any television broadcast station in the Philadelphia market area until this Final Judgment shall terminate and be of no further force and effect.

NBC and RCA are prohibited, for a period of five years from and after the date of entry of this Final Judg-

ment, from acquiring any ownership interest in any standard broadcast station in the Philadelphia market area. Any such acquisition after five years from the date of entry of this Final Judgment shall be subject to the procedure provided in subsection (B) of Section IV of this Final Judgment for acquisition of television broadcast stations in certain market areas.

VI.

Nothing contained in this Final Judgment shall be construed to require this Court to pass upon any transaction of acquisition or exchange by the defendants or any undertaking by them of national spot representation except to the extent expressly stated in subsections (B) and (C) of Section IV and in Section V of this Final Judgment.

Defendants shall not apply to the Federal Communications Commission for consent to any exchange or acquisition subject to the provisions of subsection (B) of Section IV or of Section V of this Final Judgment until after expiration of the time within which plaintiff may apply to this Court for a determination as provided therein or, if plaintiff so applies, until after such determination shall have been rendered by this Court. In the event of an appeal from any determination rendered by this Court pursuant to subsections (B) or (C) of Section IV or Section V of this Final Judgment, defendants shall not, during the pendency of such appeal, consummate the exchange or acquisition involved or undertake the national spot representation involved.

VII.

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Depart- [fol. 108] ment of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, and on reasonable notice

to either defendant made to its principal office, be permitted, subject to any legally recognized privilege, (a) reasonable access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment; and (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters. Either defendant, upon the written request of the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII.

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment, and no one else, to apply to this Court at any time for such further orders or directions as may be necessary or appropriate in relation to the construction of or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

IX.

This Final Judgment, and each and every provision hereof, shall terminate and be of no further force and effect nine years after the date upon which NBC finally disposes of all right, title and interest in WRCV-TV and WRCV, but in no event earlier than ten years after the date of entry of this Final Judgment.

Dated: September 22, 1959.

WILLIAM H. KIRKPATRICK,
Senior Judge.

We hereby consent to the making and entry of the foregoing Final Judgment:

For the Plaintiff: Robert A. Bicks, Acting Assistant Attorney General, W. D. Kilgore, Jr., Charles L. Whittinghill, Bernard M. Hollander, Raymond M. Carlson, Attorneys for Plaintiff;

For the Defendants: Schnader, Harrison, Segal & Lewis, By Bernard G. Segal, Edward W. Mullinix, Cahill, Gordon, Reindel & Ohl, By John F. Sonnett, Thomas E. Ervin, Vice President and General Attorney, National Broadcasting Company, Inc., Robert L. Werner, Vice President and General Attorney, Radio Corporation of America, Attorneys for Defendants.

[fol. 109]

EXHIBIT A

KOA-TV, Denver
KSD-TV, St. Louis
WCKT-TV, Miami
WAVE-TV, Louisville
WRGB-TV, Schenectady
KONA-TV, Honolulu

[fol. 109a] Certificate of Service (omitted in printing).

[fol. 110]

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

SALT LAKE CITY, UTAH

September 22, 1964

FURTHER NOTICE OF HEARING ON OCTOBER 19, 1964 ON MOTION OF F. P. C., ETC.

To:

William T. Thurman, Esq., U. S. Attorney, 200 Post Office & Courthouse Bldg., SLC

Jack Louis Lipson, Esq., Dept. of Justice, Washington, D. C.

Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, Salt Lake City, Utah

Arthur H. Dean, Esq., Sullivan & Cromwell, 48 Wall Street, New York, New York

Gregory A. Harrison, Esq., Brobeck, Phlegar & Harrison, 111 Sutter Street, San Francisco, California

Ray, Quinney and Nebeker, Suite 300, 65 South Main, Salt Lake City, Utah

Leon M. Payne, Esq., 2200 Gulf Bldg., Houston 2, Texas

Richard W. Sabin, Esq., State of Oregon, Public Utility Commissioner, Salem, Ore.

Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., Salt Lake City, Utah

James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington

Keith Sohm, Esq., 301 State Capitol Bldg., Salt Lake City, Utah

Larry D. Ripley, Esq., Asst. Attorney General, State of Idaho, Boise, Idaho

Cartano, Botzer & Chapman, 1415 Joseph Vance Bldg., Seattle, Washington

Draper, Sandack and Saperstein, 606 El Paso Natural Gas Bldg., Salt Lake City

Brigham E. Roberts, Esq., 530 Judge Bldg., Salt Lake City, Utah
C. Keefe Hurley, Esq., 60 State Street, Boston 9, Massachusetts
Joseph S. Jones, Esq., Walker Bank Bldg., Salt Lake City, Utah
Paul B. Cannon, Esq., Continental Bank Bldg., Salt Lake City, Utah
Virgil H. Wedge, Esq., First Natl. Bank of Nevada, 1 East 1st St., Reno, Nevada
Larry Pankonien, Esq., Box 2511, Houston, Texas
Robert L. Simpson, Esq., Paine, Lowe, Coffin, Herman & O'Kelly, 602 Spokane and Eastern Bldg., Spokane, Washington
William M. Bennett, Esq., Public Utilities Comm., State of California, San Francisco, California
Harold W. Pierce, Esq., 735 S. W. Morrison Street, Portland, Oregon
Rex J. Hanson, Esq., Kearns Bldg., Salt Lake City, Utah

Re: C 143-57

UNITED STATES OF AMERICA,

—vs—

EL PASO NATURAL GAS COMPANY, et al.

[fol. 111-113] Take Notice that the above-entitled case has been set for hearing at Salt Lake City, Utah, on Monday, October 19th, 1964, at 10:00 a.m. before Honorable Willis W. Ritter, on Motion of the Federal Power Commission for leave to file statement, Amicus Curiae.

Date October 13, 1964

Andrew John Brennan, Clerk, By Deana H. Scott, Deputy Clerk.

To Richard A. Solomon, General Counsel; Howard E. Wahrenbrock, Solicitor; Joel Yohalem, Attorney, Federal Power Commission, Washington, D. C.

[fol. 114]

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

SALT LAKE CITY, UTAH

October 14, 1964

FURTHER NOTICE OF HEARING ON OCTOBER 19, 1964 ON MOTION OF PARADOX, ETC.

To:

William T. Thurman, Esq., U. S. Attorney, 200 P. O. & Courthouse Bldg., SLC

Jack Louis Lipson, Esq., Dept. of Justice, Washington, D. C.

Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, Salt Lake City, Utah

Arthur H. Dean, Esq., Sullivan & Cromwell, 48 Wall St., New York, New York

Gregory A. Harrison, Esq., 111 Sutter Street, San Francisco, California

Ray, Quinney and Nebeker, Suite 300, 65 South Main, Salt Lake City, Utah

Leon M. Payne, Esq., 2200 Gulf Bldg., Houston 2, Texas

Richard W. Sabin, Esq., State of Oregon, Public Utility Comm., Salem, Oregon

Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., Salt Lake City, Utah

James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington

Keith Sahm, Esq., 301 State Capitol Bldg., Salt Lake City, Utah

Larry D. Ripley, Esq., Asst. Attorney General, State of Idaho, Boise, Idaho

Cartano, Botzer & Chapman, 1415 Joseph Vance Bldg., Seattle, Washington

Draper, Sandack and Saperstein, 606 El Paso Natural Gas Bldg., Salt Like City

Brigham E. Roberts, Esq., 530 Judge Bldg., Salt Lake City, Utah

C. Keefe Hurley, Esq., 60 State Street, Boston 9, Massachusetts

Joseph S. Jones, Esq., Walker Bank Bldg., Salt Lake City, Utah

Paul B. Cannon, Esq., Continental Bank Bldg., Salt Lake City, Utah

Virgil H. Wedge, Esq., First Natl. Bank of Nevada, 1 East 1st St., Reno, Nevada

Larry Panoknien, Esq., Box 2511, Houston, Texas

Robert L. Simpson, Esq., Paine, Lowe, Coffin, Herman & O'Kelly, 602 Spokane and Eastern Bldg., Spokane Washington

William M. Bennett, Esq., Public Utilities Comm., State of California, San Francisco, California

Harold W. Pi rce, Esq., 735 S. W. Morrison Street, Portland, Oregon

Rex J. Hanson, Esq., Kearns Bldg., Salt Lake City, Utah

Richard A. Solomon, General Counsel; Howard E. Wahrenbrock, Solicitor; Joel Yohalem, Attorney, Federal Power Commission, Washington, D. C.

Richard B. Hooper, Esq., Norton Building, Seattle 4, Washington

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C 143-57

UNITED STATES OF AMERICA,

—VS—

EL PASO NATURAL GAS COMPANY, et al.

Take Notice that the above-entitled case has been set for hearing at Salt Lake City, Utah, on Monday, October

19th, 1964, at 10:00 a.m. before Honorable Willis W. Ritter, on Application for Leave to Intervene filed by Paradox Production Corporation, a corp., and other motions as previously noticed.

Andrew John Brennan, Clerk, By Deana H. Scott, Deputy Clerk.

[fol. 115]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

PARADOX PRODUCTION CORPORATION, Intervenor.

APPLICATION FOR LEAVE TO INTERVENE—
Filed October 15, 1964

Comes now Paradox Production Corporation, a corporation duly organized and existing under the laws of the State of Nevada with its principal office at 404 Executive Building, Salt Lake City, Utah, and respectfully applies for leave to intervene in the above entitled proceeding for the purpose of submitting its Proposal for Divestiture pur-

[File endorsement omitted]

suant to the Mandate of the Supreme Court of the United States.

Respectfully submitted,

Brigham E. Roberts, Rawlings, Wallace, Roberts & Black, Suite 530 Judge Building, Salt Lake City, Utah;

C. Keefe Hurley, Earle C. Cooley, Hale and Dorr, 60 State Street, Boston, Massachusetts,

Counsel for Paradox Production Corporation.

Dated: October 14, 1964

[fol. 116] Certificate of Mailing (omitted in printing).

[fol. 117]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants

PARADOX PRODUCTION CORPORATION, Intervenor

PROPOSAL FOR DIVESTITURE PRESENTED BY PARADOX PRODUCTION CORPORATION—Filed October 15, 1964

I. Paradox Production Corporation (hereinafter called "Paradox") is a publicly owned corporation duly organ-

[File endorsement omitted]

ized and existing under the laws of the State of Nevada, having its headquarters and principal office at 404 Executive Building, Salt Lake City, Utah. Paradox was organized by men who had been with the Fish Northwest Constructors, the builder of the Pacific Northwest Pipeline, and executives who had been with the Pacific Northwest Pipeline Corporation when it was acquired in 1957 by El Paso Natural Gas Company (hereinafter called "El Paso"), and some Salt Lake City businessmen. Paradox was formed for the purposes of exploring for and producing oil and gas properties. Among the founders of Paradox were men who played dominant roles in the construction of the Pacific Northwest Pipeline and also in the original operation of the Pacific Northwest Pipeline Corporation as follows:

a. O. L. Carson, Chief Engineer and Project Manager,

b. J. Don Creveling, Manager of Land and Rights of Way,

[fol. 118] c. J. W. Hall, General Manager of all Construction,

d. Morriss C. Foster, Assistant Manager of Land and Rights of Way,

e. Jack E. Grazier, Manager of Electrical and Communication Design,

f. H. R. Garabrant, Assistant Manager of Gas Measurement,

g. R. C. Appling, Manager of Gas Dispatching and Control,

h. Bruce R. Hester, Chief Clerk of Construction,

i. Joseph E. Fitzgerald, Land and Rights of Way Department.

O. L. Carson is the President of Paradox and with the exception of Morriss C. Foster, who is now deceased, the

remaining individuals named above have expressed their desire to again devote their abilities and energy to the operation of this pipeline. In addition, approximately 135 of the 492 persons who are presently operating the Pacific Northwest Pipeline are stockholders of Paradox.

The foregoing persons have considerable experience in the natural gas industry and they are thoroughly conversant with the Pacific Northwest Pipeline in particular. This plan contemplates that those individuals will again act in executive positions in the operation of Pacific Northwest Pipeline. It also contemplates the return of the executive headquarters of the Pacific Northwest Pipeline physically to Salt Lake City, Utah and the transfer of the present operating personnel, consisting of some 492 persons, to the employment of Paradox and the continuance of service to all customers of the pipeline without interruption. The administration and operating organization herein proposed has received the approval and recommendation of Commonwealth Services, Inc., a specialized engineering and consulting firm of high repute in the natural gas industry. [fol. 119] (See copy of letter of Commonwealth Services, Inc. dated June 9, 1964 attached hereto and marked "Exhibit A".)

II. Paradox has obtained the attached letters from the following substantial financial and business interests of their intention to provide it with all of the financial ability and resources which may be necessary to make the purchases and to perform and fulfill all of the undertakings set forth in this plan as it is presently constituted and as it may be amended and supplemented:

1. Massachusetts Protective Association, Inc., 18 Chestnut Street, Worcester, Massachusetts (letter marked "Exhibit B")
2. Morgan Guaranty Trust Company of New York, 23 Wall Street, New York City, New York (letter marked "Exhibit C")

3. Bear, Stearns & Co., Members New York Stock Exchange, One Wall Street, New York City, New York (letter marked "Exhibit D").

III. Accordingly, Paradox hereby proposes to purchase from El Paso all of the stock and/or assets owned by Pacific Northwest Pipeline Corporation at the time of the stock and asset acquisitions by El Paso and all additional assets which have been acquired by El Paso since that time and which at the present time properly appertain and are a necessary adjunct to the operation of the Pacific Northwest Pipeline, at such price and upon such terms and conditions as may, after a full examination of all relevant business, financial and legal considerations, by this Court and the parties in interest, appear fair, equitable and reasonable.

IV. The interests of Paradox as owner and operator of the reconstituted Pacific Northwest Pipeline will be to supply natural gas properly and adequately to the most people possible in the Pacific Northwest and the Rocky Mountain areas of the United States at the most reasonable rates possible. Such interests and the objectives of Paradox will [fol. 120] be identical with those of the following, who have filed applications with this Court to intervene in these proceedings, and in these particulars:

A. State of Oregon

This plan contemplates:

(1) That the laterals constructed after the merger of El Paso and Pacific Northwest from Portland, Oregon to Eugene and Grants Pass, Oregon, the lateral from the Pacific Gas Transmission Main Line to Klamath Falls, Oregon, the lateral into Hood River, Oregon and the City Gate facilities at Madras, Bend, Redmund and Gilchrist, Oregon will belong to Paradox.

(2) That Paradox will be entitled to the gas acquired in Canada after the merger which is transported into the United States at King's Gate, British Columbia.

(3) That there will be no impairment of the pre-merger contract between El Paso and Pacific Northwest regarding the importation of gas at Sumas, Washington, and the transportation charge with respect thereto, insofar as the operation of the pipeline by Paradox is concerned.

(4) That Paradox will have title to the Opal Gasoline Plant located near Opal, Wyoming.

(5) That the field sales of gas in the San Juan Basin which were made by El Paso to Pacific Northwest prior to the merger shall become assets of Paradox.

(6) Paradox will take over the Belco contracts in order to make certain that those gas reserves are available to the pipeline.

(7) That the tax loss carry-overs which Pacific [fol. 121] Northwest had prior to the merger will be transferred to Paradox.

B. State of California

This plan contemplates:

That the judgment of the Supreme Court of the United States will be followed and that the original purpose of the prosecution under Section 7 of the Clayton Act will be respected. It contemplates the complete divestiture by El Paso of the Pacific Northwest Pipeline Corporation, as it presently exists as the Pacific Northwest Division of El Paso, together with all assets necessarily appertaining to its proper operation, and the reconstitution of those properties and services

which were originated as the Pacific Northwest Pipeline Corporation insofar as that is possible under the ownership of Paradox. It also contemplates a capital structure, investment, and gas supply in Paradox which will give to it the ability to render adequate services, and to compete in the future for the growing California and other markets of the Pacific Northwest and Rocky Mountain areas.

C. Washington Natural Gas Company

This plan contemplates:

(1) That El Paso's undivided one-third interest in the underground storage project in Lewis County, Washington will become the property of Paradox and Paradox will continue the agreement between Washington Natural Gas Company and the Washington Water Power Company relating thereto in [fol. 122] the place of El Paso.

(2) That subject to the approval of the Federal Power Commission Paradox will continue to be bound by El Paso's stipulation in Docket No. G-13202 providing for a moratorium on pipeline rate increases.

(3) That Paradox will assume and be bound by existing gas supply contracts between Washington Natural Gas Company and El Paso and that Paradox will have adequate continuing supplies and reserves of natural gas to fulfill such contracts.

(4) That Paradox will have an adequate and continuing supply and reserves of natural gas to meet the requirements of Washington Natural Gas Company and its consumers at its anticipated rate of future growth.

(5) That the laterals constructed by El Paso after the merger will belong to Paradox.

(6) That Paradox will acquire and own the gas acquired in Canada after the merger which is imported into the United States at King's Gate, British Columbia.

(7) That there will be no impairment of the pre-merger contract between El Paso and Pacific Northwest regarding the importation of gas at Sumas, Washington and the charge made with respect to such imported gas insofar as Paradox is concerned.

(8) That Paradox will have title to the Opal Gasoline Plant located near Opal, Wyoming.

[fol. 123] (9) That all gas reserves of the former Pacific Northwest Pipeline Corporation in the San Juan Basin and all additional gas reserves in such Basin and elsewhere which were acquired since the merger and which are essential to the proper operation of the pipeline will become the property of Paradox.

(10) Paradox will take over the Belco contracts in order to make certain that those gas reserves are available to the pipeline.

(11) That the tax loss carry-overs which Pacific Northwest had prior to the merger will be transferred to Paradox.

(12) That the field sales of gas in the San Juan Basin which were made by El Paso to Pacific Northwest prior to the merger shall become assets of Paradox.

D. Washington Utilities and Transportation Commission

This plan contemplates:

(1) That the laterals constructed after the merger of El Paso and Pacific Northwest such as from near

Olympia, Washington to serve parts of the Olympic Peninsula and Grays Harbor areas of Washington will belong to Paradox.

(2) That Paradox will be entitled to the gas allocated from the Pacific Gas Transmission Company after the merger of El Paso and Pacific Northwest.

(3) That there will be no impairment of the pre-merger contract between El Paso and Pacific Northwest regarding the importation of gas at Sumas, Washington and the service charge with respect thereto insofar as Paradox is concerned.

[fol. 124] (4) That Paradox will take title to the Opal Gasoline Plant located near Opal, Wyoming.

(5) That all gas reserves of the former Pacific Northwest Pipeline Corporation in the San Juan Basin and all additional gas reserves in such Basin and elsewhere which were acquired since the merger and which are essential to the proper operation of the pipeline will become the property of Paradox.

(6) Paradox will take over the Belco contracts in order to make certain that those gas reserves are available to the pipeline.

(7) That the tax loss carry-overs which Pacific Northwest had prior to the merger will be transferred to Paradox.

E. State of Idaho

This plan contemplates:

(a) That Paradox will be entitled to the gas acquired in Canada after the merger which is transported into the United States at King's Gate, British Columbia.

(b) There will be no impairment of the pre-merger contract between El Paso and Pacific Northwest regarding the importation of gas at Sumas, Washington and the charge made with respect to such imported gas insofar as Paradox is concerned.

(c) That Paradox will have title to the Opal Gasoline Plant located near Opal, Wyoming.

(d) That the field sales of gas in the San Juan Basin which were made by El Paso to Pacific Northwest prior to the merger shall become assets of Paradox.

[fol. 125] (e) Paradox will take over the Belco contracts in order to make certain that those gas reserves are available to the pipeline.

(f) That the tax loss carry-overs which Pacific Northwest had prior to the merger will be transferred to Paradox.

F. Mountain Fuel Supply Company

This plan contemplates:

The recognition and assumption by Paradox of all valid and lawful existing agreements between El Paso and Mountain Fuel Supply Company, the continued satisfactory performance of those agreements, and the maintenance of efficient management and moderate rates by Paradox.

G. Cascade Natural Gas Corporation

This plan contemplates:

(1) A continued satisfactory performance by Paradox, without interruption, of the service agreements, or duplicates thereof, under which gas is presently being purchased.

(2) The maintenance by Paradox of efficient management of the facilities and properties which are to be divested.

(3) The maintenance by Paradox of moderate rates to its customers and the protection of their competitive positions against damage.

(4) That subject to the approval of the Federal Power Commission Paradox will continue to be bound by El Paso's stipulation in Docket No. G-13202 providing for a moratorium on pipeline rate increases.

[fol. 126] V. The consummation of this plan of divestiture will accomplish the resuscitation of the Pacific Northwest Pipeline as a vigorous, healthy competitor in the natural gas industry in the Pacific Northwest and Rocky Mountain areas of the United States. This plan necessarily lacks detailed information relative to the assets which are the subject of the Supreme Court's order of divestiture, for the reason that Paradox has been unsuccessful in its attempts to obtain such information from El Paso. Upon an initial approval by the Court of this plan Paradox and the aforesaid financial institutions are prepared to commence immediately the actions necessary for its ultimate and earliest effectuation.

Brigham E. Roberts, Rawlings, Wallace, Roberts & Black, Suite 530 Judge Building, Salt Lake City, Utah;

C. Keefe Hurley, Earle C. Cooley, Hale and Dorr, 60 State Street, Boston, Massachusetts,

Attorneys for Paradox Production Corporation.

[fol. 127]

"EXHIBIT A" TO PROPOSAL FOR DIVESTITURE

COMMONWEALTH SERVICES · INC.
NEW YORK, N. Y. · JACKSON, MICH.
WASHINGTON, D. C. · HOUSTON, TEX.

M & M BUILDING
HOUSTON 2, TEXAS

June 9, 1964

Mr. O. L. Carson, President
Paradox Production Corporation
404 Executive Building
Salt Lake City, Utah

Dear Mr. Carson:

I have reviewed your proposed organization for operating the Pacific Northwest pipeline system in the event you acquire it. I personally know most of the key personnel in your proposed organization and I regard them as exceptionally capable operating personnel. This organization should do an outstanding job in operating the Pacific Northwest pipeline since these same people worked very well together in the construction and initial operation of the pipeline.

Yours very truly,

/s/ HARRY H. FITZGERALD
Harry H. Fitzgerald
Vice President

HHF:BW

[fol. 128]

"EXHIBIT B" TO PROPOSAL FOR DIVESTITURE

THE MASSACHUSETTS
PROTECTIVE ASSOCIATION
INCORPORATED

NON-CANCELLABLE ACCIDENT AND SICKNESS INSURANCE

WORCESTER 8, MASSACHUSETTS

FRANK L. HARRINGTON
PRESIDENT

October 9, 1964

Paradox Production Corporation
Executive Building
454 East 4th South
Salt Lake City, Utah

Gentlemen:

We are aware of the April 6, 1964 decision of the United States Supreme Court in the action by the United States against El Paso Natural Gas Company et al in which divestitute of the Pacific Northwest Pineline Corp. by El Paso Natural Gas Company was ordered without delay. We further understand that you are interested in acquiring the stock and/or assets of the Pacific Northwest Pipeline Corp. and are submitting a plan to the Utah Federal District Court and to El Paso Natural Gas Company for such acquisition. In connection with said plan, you have requested feasibility opinions from Bear, Stearns & Co., Morgan Guaranty Trust Company of New York and ourselves. It is understood that considerable further study of relevant business, financial and legal considerations will be carried out by the Utah Federal District Court, the Department of Justice and the parties involved before a definitive plan

considered fair, equitable and proper is agreed upon and accepted by the Court. The price, terms and conditions established by such plan as finally accepted will be relevant factors to be considered by any investor prior to making a firm commitment to furnish financing. Our opinion is based upon, and presupposes, acceptance of a plan that appears fair, equitable and reasonable to our respective companies.

As an institutional investor, and based upon our present knowledge of the assets and operations involved in the divestiture order and the background and capabilities of personnel available to you, in our best judgment, the proposed acquisition by you is feasible from a business and financial viewpoint. On the basis of our judgment in this regard, it is our opinion that we, in conjunction with other individual and/or institutional investors, can and will make available sufficient long-term and short-term financing to enable you to purchase the assets and/or stock subject to the divestiture order.

Very truly yours,

/s/ C. A. Reynolds
C. A. Reynolds
Second Vice President

[fol. 129]

"EXHIBIT C" TO PROPOSAL FOR DIVESTITURE

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK
23 WALL STREET, NEW YORK 15

New York October 9, 1964

The Massachusetts Protective Association
18 Chestnut Street
Worcester 8, Massachusetts

Gentlemen:

Re: Pacific Northwest Pipeline Corporation

You have informed us that the Paradox Production Corporation of Salt Lake City proposes to submit a plan to the United States District Court for the District of Utah and to El Paso Natural Gas Company for the purchase by it of the stock and/or assets of Pacific Northwest Pipeline Corporation which are to be disposed of by El Paso pursuant to the recent opinion of the Supreme Court of the United States in the *United States vs. El Paso Natural Gas Company*. We understand that Massachusetts Protective Association has or soon will have a direct financial interest in Paradox Production Corporation. We further understand that as a part of the preliminary filing by Paradox Production Corporation in the District Court it will wish to indicate that the purchase by it of Pacific Northwest is financially practicable and in support of this plan you have asked us to express our opinion regarding the financial feasibility of such an acquisition by Paradox. It is also our understanding that the Massachusetts Protective Association and Bear Stearns & Company will provide feasibility opinions as well.

We have had no relationship with Paradox Production Corporation nor any of its officers or directors, nor do we have any knowledge of its present financial status. We do not have at this time any indication of the value likely to be attributed to the Pacific Northwest Pipeline properties or of the cost at which they may be acquired in the future, should the Court determine that Pacific Northwest Pipeline's ultimate disposition by El Paso is to be consummated by the sale of its stock and/or assets. It is our assumption that considerable time will be necessary to establish clear cut definitions of the properties involved, and of the values attributable to such properties before a final plan is determined and found acceptable by the Court. We are, however, generally aware of the costs and operations of pipeline properties and of the fair values likely to be attributed to such properties by regulatory bodies.

[fol. 130] Because of our experience in the area of utility and pipeline financing, we feel we are in a position to offer the opinion that the proposed acquisition by Paradox of the Pacific Northwest Pipeline properties would be financially feasible and that it would be possible for Paradox to obtain the requisite financing if the price of the properties involved is established by the Court in conformity with usual pipeline valuations and after it has the benefit of opinions of interested governmental regulatory agencies and the respective companies, and if the matter is completed within a reasonable time.

Very truly yours,

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK

/s/ JOHN P. GLORIEUX
John P. Glorieux

[fol. 131]

"EXHIBIT D" TO PROPOSAL FOR DIVESTITURE

BEAR, STEARNS & CO.
MEMBERS NEW YORK STOCK EXCHANGE
ONE WALL STREET
NEW YORK 5, N. Y.

October 5, 1964

Re: Pacific Northwest Pipeline Corporation

Paradox Production Corporation
404 Executive Building
Salt Lake City, Utah

Gentlemen:

We understand that you are submitting a plan to the United States District Court for the District of Utah and to El Paso Natural Gas Company (El Paso) for the purchase by you of the stock and/or assets of Pacific Northwest Pipeline Corporation (Pacific Northwest) which are to be disposed of by El Paso pursuant to the recent opinion of the Supreme Court of the United States in *United States v. El Paso Natural Gas Company*. We further understand that as a part of your preliminary plan to be submitted to the District Court you wish to indicate that the purchase of Pacific Northwest by Paradox is financially possible and that to this end you are securing feasibility opinions from the Morgan Guaranty Trust Co. of New York and the Massachusetts Protective Association (Worcester, Massachusetts) in addition to the opinion expressed by ourselves in this letter.

We have had no relationship with El Paso or any of its officers or directors and had no such relationships with Pacific Northwest or its officers or directors prior to the merger of El Paso and Pacific Northwest on December 31,

1959. However, we had had extensive experience in the financing of natural gas pipeline and related corporations. In June, 1957 we, together with Hemphill, Noyes & Co. were the principal United States underwriters in an offering of a total of approximately $12,000,000 of securities of Northern Ontario Natural Gas Company Limited. Today Northern Ontario distributes natural gas, which it purchases from Trans-Canada Pipe Lines Ltd., in Ontario from the Manitoba-Ontario border to some eighty miles north of Toronto, over a system consisting of about 968 miles of pipeline and serving almost 50,000 customers. Its total consolidated assets had grown to over $55,000,000 by the end of 1963. Another pipeline which we have underwritten is Mid-America Pipeline Company in which we were joined by White Weld & Co. Mid-America began operating in 1960, after a public offering in which we acted as one of the two principal underwriters, of approximately $30,000,000 in public offering price of subordinated debentures and common stock. Earlier this year, we were again joined by White Weld & Co. as principal underwriters of about $2,750,000 in public offering price of warrants to [fol. 132] purchase additional shares of common stock of Mid-America. The principal business of Mid-America is the ownership and operation of a common carrier pipeline for the transportation of propane, butane and natural gasoline from west Texas and nearby areas to the Minneapolis-St. Paul-Minnesota and southern Wisconsin areas. At December 31, 1963, Mid-America had assets of over $83,000,000 on its consolidated balance sheet. Further, in 1963 we were instrumental in accomplishing the financial reorganization of Rio Grande Gas Co., which was then in proceedings under Chapter X of the Bankruptcy Act in the United States District Court for the District of New Mexico. Rio Grande is a gas distributing company in the Mesilla Valley of New Mexico and the reorganization involved debt financing of approximately $600,000 and equity financing of approximately $550,000.

In addition, for the last twenty years we have published monthly statistical surveys of both the natural gas and the electrical utility industries which are commonly accepted by the financial community as the standard reference work. In the last two years we have extended our activities to include a computer-based statistical projection of earnings and capital investment for these companies. We believe these activities further add to our knowledge of the workings of the industry and the financing of such companies. Attached to this letter are the most recent copies of these services.

Also attached is our firm's latest audited statement of financial condition (May 31, 1963).

We are generally aware of the cost and operations of the assets which are likely to be covered by the pending divestiture order of the United States District Court for the District of Utah, and we are also aware that considerable study is going to be required before a definitive plan is arrived at and accepted by the court. However, as a result of our present knowledge of the assets and operations involved and our general experience in and knowledge of the business, it is our judgment that the proposed acquisition by you from El Paso is financially feasible and that it will be possible for you to obtain the financing necessary for the purchase. We understand that such financing would be called for at such price and on such terms and conditions as may appear fair, equitable and reasonable after full examination of all relevant business, financial and legal considerations by the court, the Department of Justice and the respective companies.

We are prepared to work closely with you in arriving at the appropriate terms and conditions for the necessary financing, and when they are arrived at, are prepared to organize and manage a syndicate for the public sale of the equity portion of such securities and to act as agent in the private placement of the debt portion thereof. You will understand, in this connection, that any commitment

on our part is subject to our arriving at mutually satisfactory terms which would be stated in a definitive contract or contracts between you and us.

Very truly yours,

BEAR, STEARNS & Co.

By /s/ V. THEODORE LOW
V. Theodore Low

Enclosures

[fol. 133] Certificate of Mailing (omitted in printing).

[fol. 134]

LETTER FROM GEORGE J. MEIBURGER TO HON. JOSEPH C. SWIDLER, CHAIRMAN, F.P.C.

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

(Letterhead of Gallagher, Connor and Boland, Washington, D.C. 20005)

October 13, 1964

The Honorable Joseph C. Swidler
Chairman
Federal Power Commission
441 G Street, N. W.
Washington, D. C. 20026

Re: El Paso Natural Gas Company—
Northwest Division Divestiture.

Dear Chairman Swidler:

The Northwest Division of El Paso Natural Gas Company is the sole supplier of natural gas to Washington Natural Gas Company for the latter's distribution system

[File endorsement omitted]

which serves approximately 110,000 customers of all classes in the State of Washington. Washington Natural, therefore, has a vital concern in the impending divestiture by El Paso of its Northwest Division properties.

We have been informed that a plan of divestiture has been formulated by El Paso and will soon be submitted to the United States District Court for the District of Utah, Central Division, in the proceedings in *United States of America* v. *El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation,* Civil No. 143-57. We do not, however, have any detailed information concerning the proposed plan or any way of testing its potential economic impact upon Washington Natural and the consumers which it serves. We have assumed, as a matter of course, that the Northwest Division's successor-in-interest, or the New Company, will inevitably require certificate authorization from this Commission. Further, it has been our belief that the proceedings before this Commission on the application for the certificate would give us a hearing before a responsible forum in which all matters affecting the public interest in the New Company could be scrutinized and appropriate steps taken to protect the customers served by the Northwest Division.

[fol. 135] But, it must be conceded that the precise areas of judicial versus administrative cognizance are not readily determinable in advance in this case, because of its unusual posture before the District Court. Because of these unanswered questions, Washington Natural has filed a request to intervene in the proceedings before the District Court. That request has not yet been granted, but if it is, we intend to participate in the proceedings before the District Court to the extent permitted.

We believe that the proceedings before the District Court, and the subsequent certificate proceedings before this Commission are of such importance to the future of Washington Natural that it cannot afford to miss any occasion or opportunity to protect its interests in these matters. We

respectfully submit the following summary of the questions and issues which must be considered, either by the District Court or this Commission, in considering the properties, contracts and services which will be transferred to the New Company:

Gas Supply Contracts Between El Paso and New Company. This involves the material terms of all contracts or agreements to be made between El Paso and the new company, such as those concerning El Paso's existing contracts to purchase natural gas from Westcoast Transmission Company for delivery at Sumas, Washington and Kingsgate, British Columbia; the gas if any to be sold or exchanged by El Paso to the new company for delivery at Ignacio, Colorado; contracts relating to the operation of the common gathering system in the San Juan Basin; and the new company's transportation of gas between Ignacio and Green River, which El Paso exchanges with or delivers to Colorado Interstate under its X-4 rate schedule. The above-mentioned Kingsgate transaction and related exchange at Ignacio, Colorado were not authorized by the Commission until after the merger in August of 1960 (24 FPC 134), and should not give rise to an undue burden upon Washington Natural and other northwestern distributors.

Treatment of Pre-Merger Sale of San Juan Gas to Pacific Northwest Under El Paso Rate Schedule X-1. Prior to the effective date of the merger, El Paso sold and delivered San Juan Basin gas to Pacific Northwest under El Paso's Rate Schedule X-1. Such gas was to be returned to El Paso by Pacific Northwest over a future period. To determine the status of this item and how it should be [fol. 136] handled after divestiture, consideration should be given to yearly volumes of San Juan Basin gas made available by El Paso to its Northwest Division for the calendar years 1957 (in which El Paso acquired control of Pacific Northwest) through 1963, and the estimated volume for 1964. During the same periods, the cost recorded on

the Northwest Division's books for such gas is pertinent. Likewise, consideration should be given during the same annual periods to the volumes of Northwest Division gas made available to El Paso's Southern Division and the cost recorded on the Southern Division's books for such gas.

Company Owned Gas Reserves. It is the position of Washington Natural Gas Company that the successor company in the divestiture is entitled to all remaining gas reserves which were held by Pacific Northwest prior to acquisition of control by El Paso in 1957 and, in addition, a fair allocation of all reserves acquired or developed by El Paso since it attained such control, which could reasonably be employed by the new company in rendering service to its customers. To determine whether or not a fair allocation has been made, the following information is essential: (a) All natural gas acreage added after April, 1957, with dates of acquisition and estimated available pipeline gas reserves therein at the present time. (b) All natural gas acreage transferred after April, 1957 from non-producing gas lands to producing gas lands, with dates of original acquisition, dates of transfer and estimated available pipeline gas reserves thereunder at the present time. (c) All gas purchase contracts made after April, 1957, with contract dates, El Paso's contract code number or other identification, name of vendor and estimated available pipeline gas reserves under such contracts at the present time. (d) All supplements to gas purchase contracts made after April, 1957, including date of supplement, code number or other identification, name of vendor and effect of the supplement on estimated available pipeline gas reserves at the present time. Information under points (a) and (b) above should include all cases of dual completions whereby reserves in proven wells at April, 1957, have been increased by further development after that date.

Forecast of Gas Requirements for New Company. We have seen a schedule prepared by El Paso designated

Schedule 2 and headed "NEW COMPANY—ESTIMATED GAS SUPPLY VS. REQUIREMENTS, ETC.". This schedule shows a substantial reduction of total gas requirements for the new company after the year 1967. Considering the steady [fol. 137] growth of natural gas consumption throughout the area which will be served by the new company and what we consider to be reliable forecasts of future growth at least at the same rate, we cannot understand the projected reduction in total gas requirements of the new company after 1967. If Schedule 2, referred to above, is used as a basis for determining allocation of natural gas reserves to the new company, we fear that the new company would not have adequate reserves and might be forced into a costly crash program of obtaining substantial additional gas supplies, which would not be in the public interest.

The Northwest Division of El Paso can prosper under separate ownership if the enforced divestiture does not deprive it of the adequate gas reserves and the sound financial structure which it deserves. It is our belief that the public interest requires that a fair allocation of the gas reserves developed or acquired by El Paso since 1957 should be made. It must be assumed that El Paso acquired the additional reserves with the intent to devote a fair proportion of them to the Northwest Division. The fact that the courts have ruled that the anti-trust laws have been violated should not work to the detriment of the natural gas distribution companies and the general public in the area of the Northwest Division.

Washington Natural Gas Company earnestly requests the assistance of the Commission in obtaining full scrutiny, in the appropriate tribunal, of the foregoing matters. Our efforts will be directed toward that end in the court proceedings relating to the divestiture to the extent the company is permitted to participate. We further assume that a hearing will be held by your Commission to determine the terms and conditions required in the public interest with respect to the certificate of public convenience and

necessity to be issued by the Commission to the successor or New Company; and that in such FPC proceeding all affected parties, including Washington Natural, will be afforded an opportunity to heard.

The undersigned counsel has been specifically authorized and directed to execute this letter on behalf of Washington Natural Gas Company.

[fol. 138] A copy of this letter is being sent to each member of the Commission and to the persons indicated below.

Very truly yours,

/s/ GEORGE J. MEIBURGER
George J. Meiburger

GJM:ec

Copies to:

Each Member of the Federal
Power Commission

Honorable Willis W. Ritter
United States District Court,
District of Utah
Salt Lake City, Utah

Richard A. Solomon, General Counsel
Federal Power Commission

Wm. H. Orrick, Jr.
Assistant Attorney General
Anti Trust Division
Department of Justice
Washington, D. C.

Gregory Harrison, Counsel for
El Paso Natural Gas Company
1111 Sutter Street
San Francisco, California

[fol. 138-1]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

C 143-57

UNITED STATES OF AMERICA, Plaintiff,

—v—

EL PASO NATURAL GAS COMPANY, et al., Defendants.

Salt Lake City, Utah

Before: The Honorable WILLIS W. RITTER, Chief Judge.

Transcript of Proceedings—October 19, 1964

APPEARANCES:

For the Plaintiff:

Larry L. Williams, Esq., Jack L. Lipson, Esq., Lawrence F. Noble, Esq., Antitrust Division, Department of Justice, Washington, D. C.

William T. Thurman, Esq., U. S. Attorney, 200 Courthouse & P. O. Bldg., Salt Lake City, Utah.

For defendant El Paso:

Gregory A. Harrison, Esq., Robert S. Daggett, Esq., Brobeck, Phleger & Harrison, 111 Sutter Street, San Francisco, California.

[fol. 138-2] Leon M. Payne, Esq., Andreus, Keith, Campbell & Jones, 25th Floor Humble Bldg., Houston, Texas.

S. M. Cornwall, Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, Salt Lake City, Utah.

For defendant Pacific Northwest:

Paul H. Ray, Esq., A. H. Nebeker, Esq., Ray, Quinney & Nebeker, 300 Deseret Building, Salt Lake City, Utah.

Amicus Curiae:

Richard A. Solomon, Esq., General Counsel, Federal Power Commission, Washington, D. C.

Applicants for Intervention:

State of California:

William M. Bennett, Esq., State Building, San Francisco, California.

State of Oregon:

Robert Y. Thornton, Esq., Attorney General, Richard W. Sabin, Esq., Asst. Attorney General, Public Service Bldg., Salem, Oregon.

David K. Watkiss, Esq., 315 East Second South, Salt Lake City, Utah.

Washington Utilities & Transportation Commission:

Robert E. Simpson, Esq., Temple of Justice, Olympia, Washington.

[fol. 138-3] Idaho Public Utilities Commission:

Larry D. Ripley, Esq., M. Allyn Bingle, Esq., State House, Boise, Idaho.

The Washington Water Power Company:

Robert L. Simpson, Esq., Paine, Reeve, Coffin, Herman & O'Kelly, 602 Spokane & Eastern Bldg., Spokane, Washington.

Cascade Natural Gas Corp.:

Richard B. Hooper, Esq., Jones, Grey, Kenoe, Hooper & Olsen, 1000 Norton Bldg., Seattle, Washington.

Washington Natural Gas Co.:

John W. Chapman, Esq., 1415 Joseph Vance Bldg., Seattle, Washington.

George J. Meiburger, Esq., 821-15th St. N. W., Washington, D. C.

A. W. Sandack, Esq., 606 El Paso Gas Building, Salt Lake City, Utah.

Northwest Natural Gas Co.:

Harold W. Pierce, Esq., 735 S. W. Morrison, Portland, Oregon.

Rex J. Hanson, Esq., 909 Kearns Bldg., Salt Lake City, Utah.

Mountain Fuel Supply Co.:

Joseph S. Jones, Esq., 800 Walker Bank Building, Salt Lake City, Utah.

Paradox Production:

C. Keefe Hurley, Esq., Earle C. Cooley, Esq., 60 State Street, Boston, Massachusetts.

[fol. 138-3a] Calvin W. Rawlings, Esq., Brigham E. Roberts, Esq., Judge Building, Salt Lake City, Utah.

Also Present:

Paul B. Cannon, Esq., 920 Continental Bank Bldg., Salt Lake City, Utah, Representing Pacific Western Pipeline Corp.

Henry F. Lippitt 2nd, Esq., 611 Wilshire Blvd., Los Angeles 17, California, Representing California Gas Producers Association.

[fol. 138-4] October 19, 1964

The Court: Next is the El Paso matter. I guess there are some attorneys we need to have admitted.

Mr. Thurman: That is right, your Honor.

The Court: All right, you may proceed,

Mr. Thurman: Your Honor, I have the pleasure to present Larry L. Williams, an attorney with the Antitrust Division with the Department of Justice in Washington, D. C.

Mr. Williams is a member of the bar of North Carolina and admitted to practice before the United States Supreme Court. I know him to be a man of professional competence, and it is my recommendation that he be admitted to practice before this court for the purpose of this case only.

The Court: You may be admitted, Mr. Williams.

Mr. Williams: Thank you.

The Court: It is a pleasure to have you here.

Mr. Cornwall: If the Court please, I would like to introduce to the court Mr. Robert S. Daggett of San Francisco, California. He is a member of the California state and federal bars. I know him to be a man of good character, and I move his admission to appear in this case only on behalf of the defendant El Paso Natural Gas Company.

The Court: You may be admitted. It is a pleasure to have you here.

[fol. 138-5] Mr. Sandack: If your Honor please, it is a pleasure to introduce Mr. John Chapman of Seattle, Washington, and George Meiburger—

The Court: Let's have them come over here, so I can see to whom I am talking.

Mr. Sandack: (Continuing)—of Washington, D. C.

The Court: Now, who is the first gentleman?

Mr. Chapman: Chapman, sir. John Chapman of Seattle.

Mr. Sandack: And George Meiburger.

The Court: From where?

Mr. Chapman: Seattle.

Mr. Sandack: Mr. Richard B. Hooper of Seattle, Washington.

The Court: Mr. Meiburger comes from where?

Mr. Meiburger: Washington, D. C.

Mr. Sandack: Robert L. Simpson, Seattle, Washington.

Mr. Simpson: Spokane.

Mr. Sandack: Spokane.

The Court: All right.

Mr. Sandack: Mr. Simpson is a member of the bar of Washington and counsel for the Washington Water Power Co.

Mr. Hooper is counsel for Cascade Natural Gas.

Mr. Meiburger and Mr. Chapman are counsel for Washington Natural Gas.

All of these men are members of the state bars and [fol. 138-6] federal bars of their jurisdictions, men of high repute, and would be—and should be permitted, your Honor, to perform for their respective clients for the purpose of this case only, and I move their admission.

The Court: You may be admitted for the purpose of this case only.

Mr. Sandack: Thank you, your Honor.

Mr. Chapman: Thank you, your Honor.

Mr. Meiburger: Thank you, your Honor.

Mr. Hooper: Thank you, your Honor.

Mr. Simpson: Thank you, your Honor.

The Court: Glad to have you here. I hope you like our cold weather.

Mr. Hanson: Your Honor, I would like to introduce to you Mr. Harold Pierce of Portland, Oregon. He is counsel for Northwest Natural Gas Company, and he is a member of the state and federal bar of that state. And I move he be permitted to appear as counsel for Northwest Natural Gas Company in this case only.

The Court: You may be admitted. Glad to have you here.

Mr. Boyce: Your Honor, I would like to introduce Mr. Larry G. Ripley and Mr. M. Allyn Bingle of the Idaho Attorney General's office. They represent the Idaho Public Utilities Commission. Mr. Robert E. Simpson of the Washington Attorney General's office, who represents the [fol. 138-7] Washington—

The Court: Who is Mr. Simpson?

Mr. Simpson: I am Mr. Simpson.

Mr. Boyce: Washington Utilities and Transportation Commission. And I move their admission.

The Court: You may be admitted for the purpose of this case only.

Mr. Boyce: Thank you, your Honor.

The Court: Happy to have you with us.

Mr. Roberts: Your Honor, I would like to introduce Mr. William M. Bennett of the bar of California, Mr. Earle C. Cooley of the bar of Massachusetts—

The Court: I believe I have seen Mr. Bennett somewhere before.

Mr. Bennett: They are laughing. They think it was a courtroom, your Honor, but you and I know it was another place.

The Court: You and I know.

Mr. Roberts: Mr. C. Keefe Hurley of the bar of Massachusetts. And did your Honor hear me introduce Mr. Cooley of the bar of Massachusetts.

I move that they be admitted for the purpose of this lawsuit.

The Court: Very happy to have you with us. You are admitted.

Mr. Roberts: Thank you.

[fol. 138-8] Mr. Watkiss: Your Honor, I would like to present Mr. Robert Y. Thornton, the Attorney General of the state of Oregon, and Mr. Richard W. Sabin, the assistant attorney general of the state of Oregon, of Salem, here representing the state of Oregon. I would like to move their admission for the purposes of this case.

The Court: You may be admitted for the purpose of this case. Glad to have you with us.

Mr. Thurman: Your Honor, I would like to present Mr. Richard A. Solomon, general counsel of the Federal Power Commission, of Washington, D. C.

The Court: Well, I am especially glad to have you here.

Mr. Solomon: Pleased to be here.

Mr. Thurman: Mr. Solomon is a member of the bar of the state of New York and the United States Supreme Court. I move his admission to practice before this court for the purpose of this case only.

The Court: You may be admitted.

Anyone else?

All right, Mr. Harrison, I suppose we ought to start with you.

STATEMENT BY MR. HARRISON ON BEHALF OF EL PASO

Mr. Harrison: A few brief essential facts in this case, may it please the Court.

This case began, I suppose—its incipiency was the [fol. 138-9] formation of the Pacific Northwest Pipeline Company and its certification in 1954 by the Federal Power Commission to serve the markets of the Northwest and the adjoining markets. That, of course, was the only certificate which it acquired, because it was engaged in the interstate transportation of natural gas.

In 1956 nearly all of the capital stock of that company was acquired by the El Paso Natural Gas Company, and some six months later the United States brought suit to compel divestiture of those shares on the grounds that it was a violation of Section 7 of the Clayton Act.

Subsequently, at the end of 1959, in pursuance of an order of the Federal Power Commission, there was a merger of assets of Pacific Northwest and of El Paso Natural Gas Company. And thereafter that was set aside. However, ever since that time the assets of the two companies have been operated as a unit and public service has been operated as a unit.

In due course this case was tried. The trial court rendered judgment for the defendant. It was appealed, and

the Supreme Court reversed. In the decision of the Supreme Court it made certain findings. It was the first case in which it wrote specifically the relief to be accorded.

At this point I would like to read the following findings:

[fol. 138-10] "Unsuccessful bidders are no less competitors than the successful one. The presence of two or more buyers gives buyers a choice.

"Pacific Northwest was no feeble, failing company, nor was it inexperienced and lacking in resources. It was one of the two major interstate pipelines serving the Trans-Rocky Mountain States. It had raised 250 million for its pipeline that extended 2500 miles through rugged terrain. It had adequate reserves and managerial skill. It was so strong and militant that it was viewed with concern and coveted by El Paso."

They then proceed to hold:

"Since respondents have been on notice of the anti-trust charge from almost the beginning—indeed before El Paso sought Commission approval of the merger—we not only reverse the judgment below, but direct the district court to order divestiture without delay."

And it is for the purpose of divestiture, we believe, may it please the Court, and for that only that we are here.

We also believe that the decision of the Supreme Court holds, as other decisions have held, but particularly in this situation, that the anticompetitive effect found by the Supreme Court to exist is the all-controlling factor in this case and that that factor overrides other considerations, [fol. 138-11] even though others may well be considered to be relevant by this court.

It is also true, I think, that it orders divestiture as early as practicable of the assets which were acquired by the unlawful act of acquisition.

As we will presently see, in light of the testimony we are going to give in this case, it is not practicable to ask this court to confine the divestiture to the assets which

were acquired, because it is not feasible to separate the assets of the Pacific Northwest without providing a company that is well capable of performing public service in the former markets of the Pacific Northwest and of a character which would persuade the lienholders to agree to adjustment of their security so as to permit the separation of the assets of the one company from the other.

We met in this court on July 8 of this year. This court summoned the parties before it to give a report of what was being done with regard to divestiture. The Company represented to the court at that time that it had already begun in April of this year to develop a plan of divestiture and to discuss it with the representatives of the United States, the Attorney General, and with the holders of securities which were a lien upon the properties of the company.

We represented to the court at that time that our plan [fol. 138-12] embraced a plan to transfer to the new company all of the former gas reserves of the Pacific Northwest, all of its former facilities, all of the betterments, laterals, extensions, and additional facilities constructed along the line of the Pacific Northwest by El Paso since the date of acquisition.

We represented that we were not only going to transfer to the new company the reserves of gas which were formerly owned by Pacific Northwest, but additional reserves of gas which were tributary to the pipeline of the Pacific Northwest. That and other properties were to be transferred, and the Company was supposed to present a plan in accordance with that general outline to the Attorney General, and to seek the consent of the hundreds of security holders, with the purpose in mind of separating the debt, dividing the debt into a debt of some 180 million dollars in total, I believe, 145 million secured by mortgage on the new company and the balance of some 825 millions of debt from the old company.

Again we met with the court as summoned, the Attorney General and the Company, on September 17 last when the

court again asked us for a progress report concerning the development of the plan of divestiture. The Company then reported to the court that it had developed a plan in greater detail, that it had nearly completed obtaining the consents of the mortgage holders and debenture holders of El Paso, and that within a few weeks it would be prepared to make a report to this court concerning the type of plan [fol. 138-13] of divestiture which it would recommend to the court and which it would seek consent from the Attorney General to have the court adopt.

The court set today as the date of that hearing.

In the meantime, the Company has distributed to the court and to all of the parties which, so far as it knows, claim an interest in this proceeding a document which is entitled, "El Paso Natural Gas Company Proposal for Divestiture," which is, unfortunately, a rather imposing document, but necessarily so to give to the parties who claim an interest here the information which they reasonably were seeking.

This plan, which we wish to outline to the court this morning and to explain to the court and to the parties in interest, is in accord with that which was broadly described in the July meeting and more definitely described in the September meeting and is now more finally described this morning.

It requires the creation of what we call the New Company. It requires that because of the necessity of securing the consents of the various security holders of El Paso, that it shall proceed to obtain their consents to a division of debt as between El Paso and the New Company to the end that the New Company would assume approximately 180 million dollars of El Paso's present bonds and debentures, upon the same terms and conditions as are contained in the outstanding indentures, with perhaps technical [fol. 138-14] changes that are not significant, except for an increase of one eighth of one per cent in the interest rate, which was deemed necessary by the Company as a minimum to induce the outstanding security holders to give

their consent to the exchange. The plan then provides for the transfer to the New Company of properties, assets, and related liabilities having a net book value of some $243,000. And the detail of that is attached to the plan which has been distributed and will be more completely described this morning in the testimony of the witnesses which we will offer.

These assets include all of the operating properties of the old company. It includes more particularly the additions, the betterments, the extensions, and the laterals which were constructed in the Northwest pipeline system of El Paso. It includes the gasoline plant in Wyoming, which is economically properly related to the Northwest pipeline system of El Paso. It includes, as before stated, all of the reserves which were acquired and tributary to the Pacific Northwest Pipeline system.

It then provides that the Company shall apply to the Federal Power Commission for permission to—for a certificate to enable the New Company to operate in the old markets; having in mind that a certificate was given in 1954 and again the certificate for the joint operation in 1960, we would anticipate no problem in that connection. [fol. 138-15] It further provides that immediately upon the completion of the transaction that all of the shares of the New Company would be transferred to a trustee to be named by the United States, agreed to by the Company, and approved by the court, with instructions to exercise his voting rights only in accordance with similar instructions, including the approval of this court.

It then provides that the shares themselves shall be released only when the divestiture has been completed. And, notwithstanding these provisions, the directors of the New Company are to be elected by a trustee pursuant to instructions given jointly by El Paso, the United States, and the court.

In addition to that, it provides that this court shall retain jurisdiction thereafter for the purpose of supervising

the completion of the plan of divestiture, with jurisdiction to make any changes that may seem appropriate to the court in the future and at such time as the total plan of divestiture shall have been completed.

With that introduction, may it please the Court, I would like at this time to put Mr. Howard Boyd on the stand to give us a further explanation and greater detail of the plan of divestiture, unless the court has some question of me at the moment.

The Court: No. You may do so.

[fol. 138-16] Howard Boyd called as a witness by the defendant El Paso, being first sworn, was examined and testified as follows:

Direct examination.

By Mr. Harrison:

Q. Mr. Boyd, your name and address, please.

A. Howard Boyd, Greenwich, Connecticut.

Q. And your position?

A. President of El Paso Natural Gas Company.

Q. And how long have you held that position?

A. I would judge about four or five years.

Q. And you have with you conveniently, Mr. Boyd, a copy of the so-called "El Paso Natural Gas Company Proposal for Divestiture" distributed before this hearing?

A. Yes. I have it in my hand.

Q. Are you familiar with that plan, Mr. Boyd?

A. Yes, I am, Mr. Harrison.

Q. And the various exhibits attached thereto?

A. Yes, sir.

Q. Would you please state in general terms the history of this plan beginning with the time when your company first began to discuss it with the Department of Justice and with various security holders of El Paso.

A. Yes. It is my recollection that the decision of the Supreme Court was on April 6, 1964. We studied that, con- [fol. 138-17] sidered its impact upon the company and the problems that would be involved in bringing about a divestiture.

One of the things that was of particular concern to us was that we have outstanding something in excess of six hundred million dollars of first mortgage pipeline bonds. These bonds are secured by a lien on all of the properties, that is, all of the real properties. Personal property, of course, is not embraced within that, and there are some other inconsequential exceptions.

And the problem that confronted us immediately was how we were going to divest the properties in a way that would release the lien of the mortgage which would be on the properties that we would expect to divest. So we immediately started to put together what we thought to be a plan acceptable to the security holders and hopefully that it would be acceptable to the Government as well.

After we had given this some preliminary thought, we took the initiative and asked for an appointment with the representatives of the Department of Justice. Our first conference was held, as I recall, on April 29, in the same month as the decision of the Supreme Court of the United States.

We outlined in broad terms to them a plan that we thought would be workable and which we thought could be sold to the security holders. We left with them at that time a memorandum in very broad terms outlining basi- [fol. 138-18] cally what has now been finalized in this document that I have here in my hand. We outlined to the Department that we were hopeful that we could produce a plan that the Department of Justice would be agreeable to. We told them that it would take considerable negotiation with these security holders.

Fortunately, our first mortgage pipeline bonds had all been privately placed. They are held by approximately

one hundred institutional investors. They are highly sophisticated people in the financial world.

We thought, therefore, that if we could devise a plan that would entail the creation of a new company that would be financially sound and would not impair the financial health of El Paso, that this was a matter that we could, as I say, prevail upon the security holders to accept.

Our approach was to create a company that would be able to serve the markets that Pacific Northwest had previously served, one that would enjoy strong financial health and, at the same time, permit El Paso to continue the rendition of the public service that it was certificated by the Federal Power Commission to render.

Since then we have had continued meetings with representatives of the Department of Justice.

Q. I take it the meetings have been quite numerous?

A. I would judge they have been seven or eight in number.

Q. With the Department of Justice?

[fol. 138-19] A. With the Department of Justice.

Q. But with the security holders—

A. Oh, yes—well, with the security holders. And this is set forth in one of the exhibits to the plan. Tab 2 lists the names of the security holders and the dollar volume of the bonds of El Paso Natural Gas Company, which they hold, each holding, of course, being, as I said previously, a lien on all the properties of the entire system. And this indicates the number of persons that we have contacted and the responses that we have gotten from those security holders.

In dollar volume we have approached over 98 per cent of the holders of the bonds and the sinking fund debentures, and we have gotten consents from over 95 per cent of such security holders. And to date there has been no security holder who has expressed an unwillingness to go along with this plan. Consequently, we are extremely confident that, if approved by the court, that this can be finalized with the security holders.

Q. I take it that those consents are, one may say, informal consents, since they cannot be made binding until there is a decree of divestiture and a certificate from the Federal Power Commission?

A. That is correct.

Q. Would you state in general terms the assets which are to be transferred to the proposed New Company?

[fol. 138-20] A. Yes.

Q. I believe that there is one of the tabs here that has reference to that in part.

A. Well, it is shown in several—at least two different ways. Under one tab there is a more or less detailed description of the properties that will be transferred, expressed in terms of miles and size of pipe and numbers of compressor stations and the horsepower and the like.

Also it is shown graphically on the map that appears under Tab 9, which identifies the properties that we would propose to transfer to New Company as part of the plan of divestiture.

Q. What is the total book value of the assets which are to be transferred under the proposed plan, Mr. Boyd?

A. The total book value, net book value, of the properties will be $243,000,000 approximately.

Q. And the gross value?

A. Would be $275,000,000.

Q. And will you state whether the—well, will you refer, as a matter of fact, to the last tab, I think, isn't it, Mr. Boyd, or the next to the last—Tab 11, I believe.

A. Yes, sir.

Q. And, having recourse to that tab, which is a balance sheet of the proposed New Company as of January 31, 1964, would you please explain, then, again—and also with [fol. 138-21] reference to the debt of the New Company—what the capital of the New Company would be.

A. Well, as shown by that tab, the value of the utility plant undepreciated would be $335,000,000; and, after making provision for depreciation, amortization, and depletion, the net utility plant would be $263,000,000.

Now, by way of debt we have proposed that there be assumed by New Company $145,000,000 worth of bond indebtedness and $35,000,000 worth of sinking fund debenture indebtedness. And what we have proposed to the security holders and proposed to this court is that that debt be simply sliced right off of the existing El Paso debt.

My recollection is that we have some twenty-two issues of first mortgage pipeline bonds. They have different maturity dates, different interest payments, different sinking fund requirements. And I don't recall the number of issues of sinking fund debentures, but there are quite a number of those. And what we propose is that there be a proportion of each issue of the bonded debt and a proportion of each issue of the debenture debt simply transferred to New Company and a like dollar amount canceled so far as El Paso is concerned.

The net result of that would be that New Company would have exactly the same type of capitalization, so far as bonds and debentures are concerned, as El Paso, namely, it [fol. 138-22] would have the same interest rate, with one exception that I will touch on in a minute, the same sinking fund requirements, same maturity, so that this New Company would have the benefit of what El Paso has been able to achieve as a result of its long years of successful operation.

With regard to the interest rate, we initially suggested to the Department of Justice that we were going to have to make some increase in the interest rate when we undertook to interest the security holders in transferring this debt. We, as I remember it, indicated that we were hopeful and expected to be able to do it by increasing the interest rate by one quarter of one per cent, but that we would do our best to interest the security holders by increasing the interest rate by only one eighth of one per cent.

Our initial approach to the largest holders of our debt was that we suggested that there be an increase in the in-

terest rate only with respect to the bonds and in the amount of one eighth of one per cent. That fell on deaf ears; and they argued that, by virtue of the fact that this was a new company which, even though it was a division of El Paso Natural Gas Company, which was now being operated with financial success, they pointed out that it was only a matter of a very few years ago that Pacific Northwest was in financial difficulty, and they argued that under those circumstances it was inappropriate to expect them to assume the bonds of a new company and give that [fol. 138-23] new company the same interest rating that El Paso enjoys.

They said—indicated, with some reluctance—and we have gotten some letters of protest, but in the last analysis an acceptance, that they would go along if the one eighth were made applicable both to the bonds and debentures. So that as of this moment we have acquiescence from over 95 per cent, in dollar volume, of our security holders to the transfer, as I say of $180,000,000 worth of debt, with an increase in the interest rate of only one eighth of one percent.

I might say that you had to provide some incentive of course, to induce the security holders to accept this plan, and we couldn't visualize anything any less than one eighth of one per cent.

Q. Now, in the course of your presentation to the United States and to the security holders did you keep them informed—did you advise them—

A. Yes.

Q. (Continuing)—concerning the nature of the properties you are going to transfer?

A. Yes. What we had proposed to the Department of Justice and what we outlined to the security holders basically was this: that we would create this New Company, or cause it to be created, and that we would transfer [fol. 138-24] to the new corporation all of the properties that we, in turn, had gotten from Pacific Northwest, plus

all of the additions and improvements that we had placed upon those properties. Those additions and improvements amount, in round figures, to about fifty million dollars. And, in addition thereto, we would transfer the Opal plant. The Opal plant is, as you described, commonly called a gasoline plant. It is a plant that was built on the Big Piney lateral in Wyoming. And that was built by El Paso Natural Gas Company at a cost of about nine and a half million dollars, and built by El Paso for the reason that Pacific Northwest was in such financial condition at that time that it would have been difficult for Pacific to build that gasoline plant.

The gasoline plant is essential to the operation of the Northwest Division, or those properties. Although it is called a gasoline plant, it gets that name because there are certain extractable liquids in the gas which, if not removed, will condense and create insufferable operating profits, so you must knock those liquids out of the gas stream. There are, basically, three liquids, natural gasoline being one, and hence the name "gasoline plant." Then there are butane and propane.

We would expect to transfer that plant to the new company for the very obvious reason that you cannot move the gas out of Big Piney without that natural gasoline plant.

[fol. 138-25] Q. Was that natural gasoline plant, or its book value, included in the $50,000,000 of facilities?

A. No. That is in addition to the improvements and additions that we put on the Northwest Division. So that when you add that to the $50,000,000 worth of improvements we put on, you come up in round figures to properties that we would transfer to New Company that Pacific Northwest did not own having a value, a book value, that is a cost to us of about $59,500,000.

Q. Now, in referring to the properties that are embraced within the figure of $50,000,000 of additional assets being transferred, I refer you to Tab 10, entitled "New Com-

pany Properties," "Transmission System." That, I take it, represents the extensions, the laterals, and the betterments in the system itself?

A. Yes. This describes the physical properties that would be transferred to New Company, and it includes not only what we got from Pacific Northwest, but those matters that I have just testified to.

Q. Now, would you turn your attention momentarily to the nature of the assets in the form of gas supplies and reserves which the New Company will own under the proposed plan.

A. Yes. What we propose to be transferred to New Company by way of gas reserves would be all of the gas reserves that Pacific Northwest had at the time that we acquired Pacific Northwest, excepting only those things [fol. 138-26] that have been dropped because they were found to be without economic worth, which are inconsequential in magnitude, plus all of the reserves north of Ignacio that we have acquired during our operation either of Pacific Northwest or of what afterwards became our Northwest Division. Specifically, that would include increased reserves in the so-called Big Piney area of Wyoming. But, more important, it would include the Kingsgate gas, which is a volume of gas amounting to 150 million cubic feet per day that is now delivered to our Northwest Division at a little place on the Canadian border called Kingsgate.

This is, we consider, of tremendous value to New Company for the reason that it gives—and this, of course, was the primary reason for which we wanted to acquire the Pacific Northwest facilities—it gives a connection into the Western provinces of Canada at two points: one at Sumas, Washington, which existed at the time we acquired Pacific Northwest, and the other one at this point called Kingsgate, which makes available to the Northwest Division gas produced in the province of Alberta.

I think the importance of that connection is probably best illustrated by the fact that deliveries are actually made

to our Northwest Division through a pipeline that was sponsored by Pacific Gas and Electric Company. It is a tremendous line, I think probably the largest in diameter that is in operation in the United States. There may be [fol. 138-27] others of equal size. It is a 36-inch line capable of carrying something in excess of a billion cubic feet a day. And Pacific Gas and Electric Company attached such value to a connection into the province of Alberta that they sponsored a line that goes all the way from San Francisco up into the province of Alberta, and we have an arrangement—El Paso negotiated an arrangement under which those facilities are available, not only for the transportation of 150 million cubic feet of gas that is being delivered today—and, by the way, that is delivered, of course, right in the neighborhood of the market, large market areas, of the Northwest Division. But it is also possible under the existing arrangements that those quantities can be increased when the need therefor may arise.

Q. Will you state whether or not it was El Paso that developed the Kingsgate supply of gas.

A. Yes, it was. And we carried on extensive— Let me back up a little. When Pacific Northwest was under separate management, they did initiate some negotiations for the acquisition of gas out of Alberta to be delivered some place on the Canadian border.

When we took it over, we pursued those negotiations and, in order to get the producers in that area to sign up to deliver their gas into that enterprise, El Paso had to make an outlay of very substantial sums of money. I do not have the exact figure. It exceeds something over three [fol. 138-28] million dollars that we paid in order to induce the producers to sign contracts to deliver their gas into that enterprise.

Q. By the way, would you state, Mr. Boyd, what that supply of gas represents, if it can be expressed—I am not sure whether my question is properly phrased—in the form of reserves.

A. Yes. If you look, Mr. Harrison at—back of Tab 7, you will notice that the Kingsgate gas is listed as having a reserve of 918 billion cubic feet. That is just a little short of a trillion cubic feet.

I think it might be well also, Mr. Harrison, to point out, while we are looking at that tab, that with the reserves that will be transferred to New Company New Company achieves, as indicated under that tab, a so-called reserve life index of 27.4 years. Now, I think that it might be worthwhile to explain what a reserve life index is and what a deliverability life is, which is illustrated by Tab 8, if you would like me to develop that.

Q. Please.

A. There are two standards that the Federal Power Commission and others interested in the adequacy of a gas supply of any company—that are applied to test that adequacy. One is known as the reserve life index and the other is known as the deliverability life.

The reserve life index is arrived at by taking the total [fol. 138-29] quantity of the reserves available to a pipeline and dividing into that total the quantity of gas which was produced and sold in the previous year. When you do that, you achieve for New Company, as shown under this tab, a reserve life index of 27.4 years.

I might say that that is substantially longer than the national average enjoyed by other pipeline companies.

In addition thereto—and this is more happenstance than anything else, but it comes out that way—when you compare the reserve life index that New Company will enjoy with the reserve life index of El Paso as it will appear after the divestiture accomplished in the fashion that we propose, they are substantially the same. El Paso's reserve life index will be, as I recall, 26.8 years. This will be slightly longer, 27.4 years.

The other test that is applied, principally by the Federal Power Commission, but also by security holders and others, to determine the adequacy of a gas reserve is called a deliverability life. Briefly, this is a test of the number of years

that there is deliverability from the reserves that you have in such amount that you can meet, without any curtailment, your firm obligations.

As you will observe from Tab 8, the deliverability life of New Company will be fourteen years.

I think that your Honor might be interested in the sig-
[fol. 138-30] nificance of a fourteen-year deliverability life.

The Federal Power Commission, in a series of decisions some years back, indicated that a new company seeking a certificate from it should prove—and this isn't an absolutely inflexible rule, but it should prove a minimum of a twelve-year deliverability life. In very recent years the Federal Power Commission has itself raised the question of whether or not a twelve-year test isn't too long. And the reason behind that, if I may go into this, is that this is your inventory; you cannot acquire this inventory without paying a price for it; and, if you get overstocked, there is only one person that you can charge and that is the customer. And, therefore, your deliverability life and your reserves in the absolute ought to bear some appropriate relationship to your ability to replenish your inventory as it is exhausted through sales.

Now, in our opinion, New Company is going to be in an excellent position to replenish its inventory, for the reason—this is the reason that El Paso wanted to acquire Pacific Northwest, because our gas quantities were being consumed at a high rate. We recognized that the Western provinces of Canada, as well as the Rocky Mountain area of the United States, had tremendous potential which had never been fully exploited, because those areas had never been connected to live markets.

If you think about it, you will recognize that the drilling
[fol. 138-31] of wells, as we all know, is an expensive matter, and it is difficult to induce a producer to spend millions of dollars in the exploration for gas if, after it is found, he simply has to cap his wells and wait for a market to develop.

We were confident, because of the geology of the Western provinces of Canada and the exploration that had already been undertaken there, plus what had taken place in the Rocky Mountain area, that there was a tremendous potential.

This New Company will not only go right through the Rocky Mountain area, but it will have, as I mentioned earlier, these two connections, one into British Columbia and the other one into Alberta. So that it should be in a splendid position to replenish its inventory. And we think that a fourteen-year deliverability life is, if anything, on the long side.

I might say that here again, to compare this deliverability life with the deliverability life of El Paso after divestiture—and this is just a pure accident—but the deliverability life of El Paso after divestiture will likewise be fourteen years. So New Company and El Paso will have substantially the same life index and the same deliverability life.

Mr. Harrison, at the risk—and your Honor—of volunteering something, there has been expressed to us some [fol. 138-32] confusion about a proper understanding of this Tab 8; and, since so many people have indicated that they don't understand it, with your Honor's permission, I would like to explain why it appears that we have forecast that the market requirements for sales of New Company will be going down and not up, as we know they will go.

The Court: Please go ahead.

A. (Continuing) Yes. We think that New Company is going to be very strong for the reason that—and we take credit for it whether we are entitled to it or not—we established a policy of fixing the gas price at a bare minimum, being convinced that, if we did that, we could suffer along during the years of development, but we were satisfied that, if we could provide stability to the price of gas and keep it at a bare minimum, that we could interest people in buying gas and that the increased volumes would take care of the financial ills of what we had acquired.

The wisdom of that course has demonstrated itself, and the volumes that the Northwest Division has been selling have increased constantly since we took it over, and at a very satisfactory rate.

Therefore, when we prepared this deliverability life study, many people looked at the top line, line 1, that says, "Total Gas Requirements," and they observed that the quantity appeared to go up until 1967 and then appeared [fol. 138-33] to go down, and they couldn't understand that, because they thought that was inconsistent with what had taken place in the past.

Now, the fact is that we project those quantities to go up. The explanation for the fact that they—on this line they appear to go down—is that there are two deliveries which we must make, but which, under the terms of the existing contracts, are of short duration, and, as soon as those deliveries have been completed, they will terminate.

Now, when you ignore those two deliveries, if they had not been included in this "Total Gas Requirements," if you had eliminated those, then the sheet would have shown the deliveries increasing through 1967, and then we have just plateaued them from that point, because, although we are confident that the market requirements will continue to increase, so, too, are we confident that additional volumes of gas will become available to New Company, and they can be met in that fashion.

I might add that the market requirements are not a thing that we devised. They were figures that we got from our distributors, the people to whom we sell gas. And we took their own estimates of what the market requirements would be through 1967 and incorporated them in this deliverability life study.

I might say also that with respect to the deliverability life study of El Paso after divestiture, which, as I men- [fol. 138-34] tioned, is likewise a fourteen-year deliverability life, we computed it exactly the same way. We asked our distributors, the people to whom we sell gas, to give us

an estimate of what their market requirements would be through 1967. They gave us that. We incorporated that in the deliverability life study and then plateaued it for El Paso, as we did for this company.

So that the comparison between New Company and El Paso is based upon exactly the same approach.

By Mr. Harrison:

Q. Now, will you compare, Mr. Boyd, the status of the new company, the status New Company will enjoy, with respect to gas supplies and reserves, with the state of affairs of Pacific Northwest at the time of the acquisition.

A. Well, if you look again at Tab 7, you will observe that we have added to the reserves—or will add to the reserves of New Company—918 billion cubic feet in the Kingsgate contract alone. When you consider the reserves that we have added elsewhere on the system, including the Big Piney area, we will launch New Company with probably a trillion cubic feet of more gas than Pacific Northwest had at the time we took it over.

Q. Nevertheless, in the meantime, in the past ten years, it has been supplying its market?

A. That is correct.

Q. There are certain documents—

[fol. 138-35] A. Mr. Harrison, let me rephrase that. Let me say this: that we have added a trillion cubic feet since we picked it up. Whether the New Company would have as much as a trillion more than when we took it over, I wouldn't be prepared to say, but certainly we have added a trillion cubic feet to the reserves since we picked it up. And, as you mentioned, in the meantime it has been serving its markets, of course.

Q. Attached to the proposed plan are certain proposed contracts to be entered into between the New Company and El Paso, and I will call your attention first to the so-called Sumas exchange agreement, if we may call it that, and ask you if you would give us the history of that.

A. As you will recall, when Pacific Northwest was first certificated, the plan contemplated that the gas supply would

come exclusively out of the San Juan Basin. The big markets, however, that were to be served by Pacific Northwest were, as the name would imply, in the Pacific Northwest area. They were located in Washington and Oregon. And so it seemed to us, and to others, that it would be highly beneficial for the large markets of Pacific Northwest to be supplied, at least in part, by gas that was available in British Columbia.

As a matter of fact, probably the most hotly contested certificate proceeding that the Federal Power Commission had ever entertained up to the time of the issuance of that certificate was a contest between West Coast Transmission, [fol. 138-36] which wanted to build a line out of British Columbia down into Washington and Oregon, and Pacific Northwest, that sought a certificate to build a line out of the San Juan Basin.

So, as a result of what appeared to us to make a lot of sense, namely, that the Pacific Northwest area should be served in part by British Columbia gas, there were three-way conversations between West Coast Transmission on the one hand, Pacific Northwest on another, and El Paso Natural Gas Company. And there emerged from those discussions the decision for West Coast to build a line out of British Columbia down to the international border at a place called Sumas.

For that line to be economically feasible it had to carry not less than 300 million cubic feet. If it carried less than that, your Honor, the economics would just not work out. The unit cost of gas would be prohibitive. But Pacific Northwest, with the obligations it already had to take gas out of the San Juan Basin, just could not digest 300 million cubic feet of gas.

And so, unless some arrangement was made whereby 300 million could be transported, but that Pacific Northwest wouldn't have to take that total quantity, this plan would have failed.

And so there emerged out of that—and it went through several stages, but the thing that ultimately was born and

presented to the Federal Power Commission and certificated [fol. 138-37] by that Commission—and it continued into operation right up to the time of the merger—was an arrangement whereby Pacific Northwest bought the 300 million cubic feet at the Canadian border, but immediately sold 100 million cubic feet to El Paso at the price which Pacific Northwest paid for it, and then exchanged that hundred million with El Paso for a like quantity of gas delivered to us in the San Juan Basin, and we paid not only the price which Pacific paid, but a three-cent exchange charge as well.

As I say, that arrangement was certificated by the Federal Power Commission. The tariffs were permitted to become effective, and that arrangement persisted right up to the time that we actually merged Pacific Northwest into El Paso. And, as a matter of fact, under the accounting procedures that were ordered by the Federal Power Commission in the merger case, we still kept separate books even after the merger showing the delivery of that quantity to the Southern Division and the payment of the three-cent exchange charge.

Now, being confronted with an order of divestiture, we propose that identical arrangement be re-established.

Q. I now call your attention to Tab 4, the so-called "San Juan Gathering Agreement," and ask you to give me the origin of that proposed agreement between El Paso and the New Company.

[fol. 138-38] A. At the time that Pacific Northwest was certificated, as I mentioned earlier, it expected to get its gas out of the San Juan Basin. That was the proposal that had been presented to the Federal Power Commission.

To do so that Company would have been obliged, not only to drill numerous wells down there in the San Juan Basin, but, more important, if it got no cooperation from El Paso, it would have had to build an extremely expensive gathering system.

The wells in the San Juan Basin are of low deliverability and, consequently, in order to achieve the quantity of gas

that is required to meet your needs, you need a tremendous number of wells.

I think that the El Paso system—I know that the El Paso system is connected to over six thousand gas wells in the San Juan Basin. So that it is proper to say that we had the San Juan Basin virtually blanketed with a gathering system.

Pacific Northwest had acquired some acreage in the eastern portion of the Basin. Our gathering system was more in the western portion. We were convinced then, and still are, that geologically that was a better portion of the Basin, and our primary development had been in that portion of the Basin.

So when Pacific Northwest was confronted with the neces- [fol. 138-39] sity of drilling these wells and building—they did have some acreage over in the western portion. When they were confronted with the necessity of building a gathering system that would simply duplicate ours, we proposed to Pacific Northwest that it was in the public interest that we enter into a gathering arrangement whereby we would gather the gas produced from their wells located in the area where we had a gathering system, and we proposed that they gather the gas for us from those few wells that we had in the area where then intended—where a gathering system would have to be built, because none existed, and then we would exchange out the gas, and we would make a payment for the differential in the amounts that were gathered.

We drafted a contract providing for this cooperative gathering arrangement. We felt that this was clearly in the public interest, because it saved just millions and millions of capital expense that otherwise would have had to go into duplicate gathering systems.

We provided that the price to be paid for this gathering would start off initially at 1.375, but the contract itself recited that that price would have to be subject to experience and that, based upon the experience that we had, it would be adjusted accordingly.

We started out immediately after Pacific Northwest was certificated and went into operation under that gathering arrangement. Because we shortly thereafter acquired the [fol. 138-40] stock of Pacific Northwest and then merged Pacific Northwest into El Paso, the intercompany transaction was of no importance, and so no change was ever made in that price.

However, obviously, we have had much experience in the cost of gathering gas since that arrangement was proposed, and, as a matter of fact, we have even had an arms' length negotiation with Southern Union Gas Company, which likewise operates in the San Juan Basin, and we have entered into a gathering arrangement with them under which they gather gas for us. And we were required, as a result of that arms' length bargaining with Southern Union, to pay Southern Union a little in excess of four and a half cents an Mcf.

That proposal is covered by tariffs which are on file with the Federal Power Commission and have been permitted to become effective.

So we propose here, in the re-establishment of New Company, so that it will avoid the necessity of building a duplicate gathering system at huge expense and without benefit to anyone, that we re-establish exactly the same gathering arrangement that we entered into with Pacific Northwest before the merger, with only the exception that the price now be that which experience has indicated is a minimum that we can justify and which is a price a little less than we have been able to achieve at arms' length bargaining with another company operating in that field.

[fol. 138-41] So we propose a four-and-a-half-cent gathering charge. That is what we will pay New Company for the gas that it gathers for our benefit. It is what we will expect them to pay for the gas that we gather for their benefit. Otherwise, the contracts would be identical.

Q. And, of course, that will be subject to continuing supervision and control of the Federal Power Commission as time goes on?

A. Oh, yes. We recognize that the Federal Power Commission has continuing jurisdiction to scrutinize the propriety of that charge.

Q. Now, will you turn to Tab 5, please, Mr. Boyd, to an agreement entitled, "Interim Purchase and Sale Option."

Mr. Meiburger: Pardon me. I hate to interrupt, but we can hear Mr. Boyd very well, but we can't always hear you.

Mr. Harrison: I am sorry. Most of my questions are very short, and Mr. Boyd is really the only important one.

By Mr. Harrison:

Q. The so-called "Interim Purchase and Sale Option" agreement which is marked as Tab 5, Mr. Boyd, would you please refer to that and explain its application to the Kingsgate supply of gas.

A. Yes, sir. As I mentioned, we think—and I think anyone who considers it will very readily agree—that this Kingsgate supply is of monumental value to New Company. However, the gas that will come in there to New [fol. 138-42] Company, in the quantities that I have mentioned, its maximum of 150 million cubic feet a day and the minimum of 135 million, may be difficult for New Company to handle in the initial years of its operation, not that they will have any trouble using the total volume of gas, but during the summer months they may not be able to digest 135 million cubic feet a day, which they will be required under their contract to take. So, purely to assist—or principally to assist—there is some other small reason, but principally to assist New Company in handling the swings that it will experience in its operation, we have proposed—and they are free to reject it at any time if they don't want it—but we have proposed an interim arrangement involving descending quantities of gas that will work in this fashion: that during the first year of operation of New Company it has the option, but no obligation, to put to us such quantity of Kingsgate

gas, not exceeding 22 billion cubic feet in any one year as New Company feels that it cannot handle. That gas could be delivered to us in the San Juan Basin. We would expect, of course, if they see fit to give us any gas—and we are not asking for it; this is simply to accommodate—we would expect, of course, that that gas would come to us in the summertime, which is a period of the year when, of course, we have the least need for gas. Of course, as you all know, your peak demands are in the cold weather. [fol. 138-43] And then we have provided as part of this contract that we will redeliver to New Company, if it asks for it—no obligation to take it—but if it asks for it, we will redeliver in the wintertime, when they need it, a quantity of gas not exceeding that which they had given to us in the summertime.

Now, since this is an accommodation to New Company and really permits them to meet their peaks and puts us in the position where we have to take gas when we don't want it, we have proposed that the gas that they deliver to us in the summer, when really we have no need for it, be priced to us at exactly the same price that New Company will have to pay for that gas at the Canadian border. That price is on a cost-to-service formula. It is now fluctuating between 25 and 26 cents an Mcf.

And we would provide that the quantities of gas that we sell back to them, if they ask us for it, which likewise will be delivered in the San Juan Basin, will be priced to New Company at eighteen and a half cents. That is arrived at—that eighteen and a half cents is arrived at by taking the present contract price for gas at the wellhead in the San Juan Basin, which is fourteen cents, and adding to it the four-and-a-half-cent gathering charge that we calculate is what is a minimum of what it would cost us to gather it.

And what we have proposed is that in the initial year [fol. 138-44-45] these quantities, at the option of New Company, be 22 billion cubic feet and that they descend four billion cubic feet each year for a period of five years, when this arrangement would drop out of the picture.

Now, this is one of the contracts that has made it difficult for some people to understand that deliverability life schedule, because we have treated, in the deliverability life, as part of New Company's market requirement their sales of Kingsgate gas to us, and so, in the initial years, it looks like they are selling more gas than they will in later years. But because this is simply an interim arrangement and at the end of five years it will drop out of the picture, when you remove that and another element, as I say, the deliverability life chart will show a constant increase through '67 of the market requirements of New Company.

(Recess had.)

Mr. Harrison: There is attached to this— By the way, may it please the Court, I suggest it might be appropriate to deem this document entitled, "El Paso Natural Gas Company Proposal for Divestiture" to be in evidence, and I so move.

The Court: You offer it?

Mr. Harrison: Yes.

The Court: Have it marked. Of course, I don't suppose anybody has any objection to that.

I will say to you intervenors who have motions pending [fol. 138-46] here: I am going to hear you all; and I think, because this plan was not mailed until the 13th from Washington, October 13—it was received by the court in the afternoon of the 14th, and I filed it in the clerk's office on the 15th; and I understand that at the same time it was mailed to the court copies were mailed to you folks; as a matter of fact, that has been stated here in court this morning—I think that doesn't give anybody time enough, particularly the Government, to respond here in any way you might want to respond.

Now, while I am talking on that subject, I have looked over these petitions to intervene, and the motions as well.

The Federal Power Commission has filed a motion to appear as amicus curiae. I am very happy for that. I want

you here, and we welcome you here. We welcome your help, suggestions. Maybe the court will make some suggestions to you where he thinks you might be helpful. Up to this point we haven't worked together too well.

This is a curious kind of a proceeding I have found out, one of these Clayton Act cases where there is a merger, either asset or stock, or both, as took place in this case. The Federal Power Commission has very important functions to perform in that connection. As a matter of fact, the asset merger went to the Power Commission for approval. The stock merger didn't need to go to the Power [fol. 138-47] Commission for approval, but the Government asked injunctive relief here to prevent the stock merger from being effected.

Now, where both the Power Commission and the court were involved, I thought it would be desirable to defer decision in the injunction suit until the Power Commission passed upon the asset merger, and for, it seemed to me, a very practical reason: If the Power Commission approved the asset merger, and that was sustained, and I set aside the stock merger and ordered the stock transferred back to the stockholders, the stockholders would have some stock without any assets in the company. So I stayed my hand.

The Power Commission approved the asset merger. The Supreme Court set that aside on the basis that the court should have decided the antitrust question first on the stock merger.

Well, now, you see, we kind of work at cross purposes in these cases. It might be that Congress— As a matter of fact, Justice Harlan suggests this, you know—it might be that this is a field in which we ought to have some clarifying legislation so that we don't get into this sort of business.

Well, that is simply by way of preamble to say to the general counsel of the Federal Power Commission that I am extremely happy he is here, interested. And your motion to appear as amicus is granted.

[fol. 138-48] Mr. Solomon: Thank you, your Honor.

The Court: Now, the rest of you, I think you ought to have an opportunity to tell me what your interest is, each of you, in this matter, so that I may have some basis on which to make a ruling. And I don't think I should require you to tell me what your interest is until you hear Mr. Boyd's story and you know all about what is proposed here and until you hear from the United States and the Department of Justice. So we are proceeding in that way. And I wanted to make this statement to let you know that this is what we have in mind.

The El Paso Company is going to have a full opportunity here to put on whatever evidence and make whatever statements it desires to do. And when we get that done—and there is no hurry as far as I am concerned; I am not going to put any pressure on anyone—when that is done, I am going to call upon each one of the intervenors, or those who have filed motions to intervene, petitions to intervene, to answer me a question. And I am going to tell you what the question is going to be: What is the interest that you have in this proceeding?

It appears to me—and please do not understand this as any a priori determination of the matter before you have an opportunity to be heard—it seems to me that what the Court has ordered me to do is to divest because of a [fol. 138-49] violation of the Clayton and Sherman Acts. And it seems to me that the persons primarily interested in that are El Paso and the Department of Justice.

Now, I just throw that out as a suggestion so that you know what the court is thinking about. And there has been some anxiety expressed to the court around town, here on the street corners and various places, a couple of them will come into chambers, express some anxiety that maybe somebody was getting ready to pull a fast one.

I don't know why anybody would have that notion. Dispel your minds of any notion of that sort, because you are all going to be heard.

Since this plan was filed only last weekend, I think we ought to take some time for that, and I will discuss that with you after a while.

How much evidence do you think you are going to have?

Mr. Harrison: Another half hour, your Honor.

The Court: Half an hour.

Mr. Harrison: Yes. Perhaps less.

The Court: Then how much time do you need to make any further statement about it?

Mr. Harrison: A few minutes.

The Court: Very well. Now, how much time will you folks from the Department of Justice need?

[fol. 138-50] Mr. Williams: Our preference in the matter, Judge, is this: that we be given an opportunity to defer any cross-examination of the witness, because we very recently, as you know, received a more detailed plan of divestiture. We have raised a number of questions and have asked El Paso for a considerable amount of information. They have supplied it in large part. Until we get that additional information, I think it would be premature for us to engage in cross-examination, so we prefer to wait, if that is satisfactory with your Honor.

The Court: I have already indicated I think I am going to do that. You may depend upon it. The cross-examination of this witness or any other witnesses Mr. Harrison may have will be deferred, not only for you, but for anyone else who may turn out to have an interest and will want to inquire.

Mr. Williams: Thank you.

The Court: I am prepared—this is one of those happy districts; maybe I am the only one—I am prepared just to proceed any day you want to. We can hold court every day or every other day or once a week, whatever you want to do about it. But we don't have any problem.

I wish you would advise the Attorney General's office about that. You know, I get those communications saying that one of the worst defects in the administration of

[fol. 138-51] justice is that the judges do not keep their dockets up to date. And they send that to me. You tell them about that.

All right. So be thinking about it. We are going to recess for lunch pretty soon. You will have a chance to talk about it. Be thinking about when you want to have the next hearing, how you want to proceed. I can't rule on your motions or petitions to intervene until I know what interest you have, and I don't suppose you will know what interest you have until the presentation by El Paso is complete. So we will have to proceed that way.

Mr. Roberts: Your Honor, before we adjourn, I would like to—I represent the Paradox Production Company.

The Court: What interest do you have?

Mr. Roberts: We have a plan to present, your Honor.

The Court: Oh, you do.

Mr. Roberts: And we have filed an application to intervene, but we do not have a copy of the El Paso plan, and we would like one.

The Court: You haven't received one?

Mr. Roberts: No.

The Court: How about that, Mr. Harrison?

Mr. Harrison: I think it was intended, but, if not, we will provide—

The Court: Can we have one handed to Mr. Roberts [fol. 138-52] today?

Mr. Harrison: Yes.

The Court: Do you have one out here?

Mr. Harrison: I am sure we do.

The Court: All right, we will see that you get one. The one in the clerk's office—

The Witness: We have additional copies. I think Mr. Najaiko has one.

The Court: All right. Well, we want to hear from all of you. This isn't just a pro forma thing with the court. This is a brand-new proceeding as far as I am concerned, and it is a complicated one. It presents some serious

problems. I would like your help. I don't want to get us into any more hassles than we can help. I don't know how many plans we are going to have here. I don't know how many controversies I am going to entertain. We will have to see about that.

Maybe you had better read the Federal Rules of Civil Procedure on intervention.

We will see you at two o'clock. Or did you want to say something?

Mr. Harrison: No, your Honor, just ready to proceed.

The Court: We will proceed at two o'clock.

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[fol. 138-53]

Afternoon Session
2:00 p.m.

HOWARD BOYD resumed the stand and testified further as follows:

Direct examination (contd.)

By Mr. Harrison:

Q. May I call your attention, Mr. Boyd, to Tab No. 6 in the plan, and I will ask you to describe the general nature and origin of the proposed agreement between El Paso and the New Company regarding Colorado Interstate Gas Company matters.

A. Before the stock acquisition and merger, there was a three-party arrangement under which CIG, Colorado Interstate, prepaid to Pacific Northwest the cost of transporting certain gas which Colorado Interstate intended to buy from El Paso in the future.

Only recently has Colorado Interstate started to purchase that gas.

When we took over Pacific Northwest, we assumed the obligation of transporting the gas. Now that we are proposing to divest those facilities, we would expect New Com-

pany to transport that gas. It does not involve the building of any facilities. It does not interfere with the delivery of other quantities of gas that they would expect to deliver. And, if it entails anything, it is simply a matter of fuel, cost of fuel. Otherwise it is of no cost whatsoever [fol. 138-54] to the New Company.

Q. Was that agreement, in its original form, approved by the Federal Power Commission?

A. Yes. The original three-party agreement was submitted to the Federal Power Commission, certificated by it, and appropriate tariffs were filed with the Federal Power Commission and became effective. And we are simply reestablishing that arrangement.

Q. What does this plan contemplate with respect to proceedings before the Federal Power Commission for authority, for a certificate to operate after the New Company is formed?

A. The way we visualize it, as soon as his Honor approved the plan we have proposed, or some modification of it, we anticipated that we would immediately cause New Company to make an application to the Federal Power Commission for the issuance to it of a certificate, that is necessary, as I understand, under the Natural Gas Act for it to take these properties. And this, of course, is a matter that the security holders would demand, because the security holders are in the position that they will have, if this plan goes through in the fashion that we have proposed it—they will have an investment both in El Paso and in New Company, and they want to make sure that they are well secured. And so they would expect New Company, of course, to have the authority of the Federal Power Commission for the operation of the properties.

[fol. 138-55] Q. And upon the issuance of that certificate New Company would then be in a condition to function?

A. Yes. Upon the issuance of the certificate we would expect then to transfer the properties.

Q. And you would have no other certificates, or otherwise, to apply for for that purpose?

A. No. We do not apply to the states for certificates.

Q. What does the proposed plan contemplate with reference to the existing rates, regulations, and tariffs?

A. We would propose to the court that there be incorporated in the decree of divestiture a provision that the New Company would file the same rates that were in effect at the time of divestiture. In other words, the rates would be preserved. In that same connection we would expect New Company to accept the terms of the rate settlement, which rate settlement as to the Northwest Division was made with the Federal Power Commission and approved by the Federal Power Commission, I think it was in January of this year, 1964.

Among other things, that rate settlement had a so-called moratorium provision, a provision under which it was agreed that no application would be made for a rate increase within a certain limited period of time.

Q. So that if the plan should be carried into effect and a decree entered thereon, there would be no change pending further action by the Federal Power Commission [fol. 138-56] authorizing a change in rates or regulations of the New Company?

A. That is right. It would then have to be on the instigation of New Company, over which we would have no control or influence.

Q. Speaking of that, what does the plan propose with reference to control of the New Company?

A. Well, we expect to have absolutely no control, no influence whatsoever, with respect to the New Company, and we have already suggested to the Department of Justice that we would expect to propose for their consideration, and ultimate submission to the court for approval by the court, top management for this company. And in that connection let me say also that the consents that have been voiced by the security holders have all been on condition that this New Company have top flight management, for the reason that they will have a $180,000,000 investment in this New Company, and, for understandable reasons, they want to make sure that it will be well managed.

Q. And what does the plan contemplate with reference to the control of the Pacific Northwest pending the final divestment of the common shares of stock in the New Company?

A. We would expect that the shares of New Company would be immediately transferred to a trustee appointed by the court, to be held by the trustee, to be voted by the trustee and held by the trustee until it was ultimately [fol. 138-57] distributed in the fashion approved by the court.

Q. And the selection of the board of directors would be in the hands of whom?

A. Well, we would expect that to be approved by the court. We would expect to make suggestions perhaps to the Department of Justice so that they could scrutinize these people and ultimately to be submitted to the court and approved by the court.

Q. Now, looking at the New Company as you visualize its being created under this proposed plan and comparing it with the Pacific Northwest at the time it was acquired, would you say which of the two you would regard as stronger with regard to resources of gas reserves.

A. Well, it hardly admits of comparison. The company that we took over was in financial difficulty. They had some dividend coming due on their preferred stock which they were going to be incapable of meeting, which would have put them, of course, in a very bad light in the financial world. The earnings, of course, were so poor that within a matter of six months after we took it over, in order for the company even to meet its fixed charges, we had to put into effect a rate increase, and that was in August of 1957, as I remember it.

By the way, there has never been any increase since that time, and, as I mentioned earlier, what we did then was [fol. 138-58] to put in a rate increase that we thought was the bare minimum that we could live with, hopeful that in that fashion we could encourage the development of gas

purchases, and that its financial ailment could be cured as a result of expanding the sales.

Now that has materialized and now this company is in a position where it can flourish. And on that particular aspect of what the estimated earnings are going to be, I think that Mr. Kayser is in probably a better position to develop that than I am, but I just have no doubt but what, from an earnings standpoint, which, of course, is important from the standpoint of expansion, this company will be immeasurably stronger than Pacific Northwest ever was.

From the standpoint of gas reserves, as I mentioned earlier, it is not only getting back all of the reserves that we—that it had when we took it over, but, in addition to that, we have negotiated the arrangement under which it now gets 150 million cubic feet out of Alberta that comes down through that big 36-inch line. And, as I mentioned earlier, that line has an economic capacity in excess of a billion cubic feet, and at present there are only 600 million cubic feet of gas moving through that line. Four hundred fifty million goes to PGE and the balance, or the 150 million, goes to our Northwest Division. So that there is capacity in that line, the incremental expansion of which will bring about economies. In addition to that, it is in an area [fol. 138-59] that has tremendous gas potential.

Q. Will you compare the Pacific Northwest with the New Company as it is created under this plan with respect to its ability to serve the markets of the Pacific Northwest.

A. The company that we took over was in such shape that the rates were not generating even the fixed charges. Now the rates are producing satisfactory earnings. So that the company that we took over was in a position where it was highly probable that increased rates would have to be put into effect. We have avoided that, and, because the earnings are in a satisfactory position, certainly, if we should remain in control of the Northwest Division, we would have no thought about increasing the rates.

Now, what is done in the future, of course, is going to have to be the decision of a completely independent management. Certainly I see nothing on the horizon that would indicate the necessity or desirability of increasing the rates. And I see Mr. Solomon there. I would suspect that there would be a lot of resistance on the part of the Federal Power Commission to any effort to increase the rates now on the Northwest Division.

Q. And with respect to its ability to compete for future increase in demand in the Northwest or other markets, will you compare the old Pacific Northwest with the New Company.

A. Here again it has a better gas supply, it has access to [fol. 138-60] areas that it did not have before. It would be in a far more sound financial position. I think that is an aspect that Mr. Kayser should develop in some greater detail. It will have satisfactory earnings. So that from every standpoint, it seems to me, it would be in a far better position to both serve its present markets and to expand into such areas as it was inclined to try to expand.

Mr. Harrison: I would like to call Mr. Kayser next, if I may.

The Court: All right. It may be understood that the cross-examination of this witness may be deferred.

The Witness: Your Honor, there was one point—

Mr. Harrison: Oh, yes, I forgot to say that the witness had one point he wanted to clear up with respect to—

The Witness: Some of my associates understood me to say something that I didn't mean to convey, when I was talking about the arrangement under which, for a five-year period, we would take gas, Kingsgate gas, in the summertime when it wasn't needed and we would give the New Company the option to buy back from us in the wintertime gas in the San Juan Basin. They need not buy that gas back from us, but, in order to meet their peak demands, if they wanted to buy it back, we would give them the option to buy it back. But if it is not needed, they can meet

their demand for gas supply to them independently of any sale.

[fol. 138-61] (Witness excused.)

PAUL KAYSER called as a witness by the defendant El Paso, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Harrison:

Q. I would like you to turn, if you would, Mr. Kayser—Pardon me. What is your name, Mr. Kayser?

A. Paul Kayser.

Q. And your address?

A. Home address is Houston, Texas.

Q. And your occupation?

A. Executive of El Paso Natural Gas.

Q. Would you turn to Tab 11 of the plan, Mr. Kayser.

A. Yes, I have it.

Q. Giving your attention to Tab 11, which is the pro forma balance sheet for the New Company as of December 31, 1964, will you state whether, in your opinion, that balance sheet reflects the balance sheet of the Company in a healthy and sound financial condition, with particular reference, if you will, please, to the capitalization ratios.

A. Yes, it certainly does. To go back over to the plan as outlined, we have set forth on page 6 of that plan a capitalization ratio. And here is the reason that I think it does represent a sound and excellent balance sheet for a [fol. 138-62] new company: You will notice on page 6 that it has a common equity ratio of 25 per cent, 25.42, to be a little more accurate. It has a bond ratio in the fifties, and a debenture of some 14 or 15, a total ratio of about 74.58 of debt to 25.42 of equity, common equity.

Now, the point there is that that company is in an excellent position to finance any new expansion that could

reasonably come up before it immediately, because it does not have any preferred stock outstanding, and there is an A-1 market for good preferred stock.

This company having no preferred stock, it is obvious that it would be easier for it to issue a substantial amount of preferred stock than if it had a substantial amount of preferred stock outstanding already.

There is an excellent market in the institutions and in the funds, like pension funds, savings funds, in New York for preferred stocks. And the one good factor about it is that there wouldn't be any difficulty—there would be no difficulty for this company to sell an issue of five million to one single purchaser like United States Steel pension fund, or Metropolitan, or any one of the big insurance companies. They like to buy in one bite a substantial amount of preferred stock that has good earnings behind it.

Consequently, I think that they are in the maximum position to be able to finance their expansion.

[fol. 138-63] Now, on their earnings, which were found at a later point, they are A-1, and the cash flow is good. And I think that the Company will be in a splendid position to finance any expansion that may come its way.

Q. Speaking of earnings, Mr. Kayser, the El Paso Natural Gas Company has kept separate accounts, as well as management, of the Northwest Division, has it not?

A. Yes.

Q. And the Northwest Division substantially represents the old Pacific Northwest and the New Company, as far as its facilities are concerned?

A. That is right.

Q. Will you state what the history of earnings generally has been since the acquisition in 1956.

A. Yes. I find from the first difficulties that arose, which arose fairly quickly, or in the first year of operation, the Company has constantly attached new business. It has actually had a growth of around six per cent a year. That growth is based, not upon great big contracts of new cus-

tomers, but it has been based upon (1) the growth of the domestic and small industrial business and so-called commercial business, plus a constant attachment of fairly large new plants, sometimes in new areas, sometimes new plants brought into the area. So that it has had a satisfactory, substantial growth.

[fol. 138-64] Of course, we kept up with it, and there is no reason under the sun that we can see, nor can any of the distributors see, nor any of the authorities in the Northwest, why that growth isn't going to continue for a substantial length of time at about the same ratio of increase.

Now, the interesting thing about it is that natural gas has found its place in competition with cheap water power and in competition with cheap oil.

Now, when it could do that, you have every expectation that it can continue to hold that position. And that it has done, and we think that it certainly will. We think the company, as constituted, is going to be one of the strongest and best pipeline companies in the United States and that it will be recognized as such in the market.

Q. And therefore immeasurably stronger in respect to markets and earnings than the old company? A. Certainly. Certainly the first thing that the company had the job to do was to establish itself in its original service area. It couldn't go running out somewhere else until it had established itself there.

That has been done, and therefore it is in the maximum position to go to whatever it is able to do—I mean, wherever it is appropriate and to any area it can reach on an economic basis.

Q. Mr. Kayser, will you describe in general terms the [fol. 138-65] stock ownership of the El Paso Natural Gas Company today and the manner in which its stock is distributed.

A. Speaking of the common stock—that is the only thing that is important—it has in round figures 115 thousand shareholders. Shareholders owning 99 shares or less, the number of those shareholders is 59 thousand. If you go

on up and include 100 shares, people who hold 100 shares or less, you have 85 thousand stockholders. If you go on up to 200 shares and less, you have 102 thousand stock- more widely distributed than that. Nobody has anything more than about one per cent, and there are very few of those.

Mr. Harrison: I think that is all. Thank you, Mr. Kayser.

If your Honor please, this is our explanation of the plan.

The Witness: If I may—

Mr. Harrison: Yes.

The Witness: I would like, Mr. Harrison, to affirm the fact, because I am one of the executives, of our desire to constitute an independent company. The first thing we said when we walked into the Antitrust Division: "We want to set up an independent company over which we have no control." And I think I said it this way: "We have burned our fingers once; we don't want to burn them again. We [fol. 138-66] want to be completely away from the company, with no shadow of control."

That is speaking for the company.

(Witness excused.)

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Harrison: If the Court please, this is the explanation we have offered in an effort to make as clear as we could the plan, its purpose, and its details. In so doing, we think that we are presenting a plan that is reasonable and proper, within the law and in keeping with the decision and mandate of the Supreme Court.

I would like to call the court's attention to the fact that this is not a Sherman Act case, that no monopoly and no conspiracy was charged. The Supreme Court found none. The Supreme Court held that the only question was whether there was a violation here of Section 7 of the Clayton Act, meaning, in other words, that the only possible violation was the reasonable probability of effect upon competition of the future.

I think it has been said more than once by the Supreme Court and again by other courts that this is not a penal proceeding, and the real purpose of the proceeding is to accomplish what, in substance, would have happened if, before the acquisition of the stock of Pacific Northwest, the Attorney General had intervened with a suit and successfully enjoined the acquisition. In that case the Pacific Northwest would have continued, for better or for worse, [fol. 138-67] and for what competition it could have offered.

I believe the law to be, if we were to interpret it strictly —and in the ordinary case it is easy enough to do, and that is to divest what you have got, saying it was proved to be unlawful, and to separate that from the rest of the assets and send it on its way in whatever manner the district judge decides.

We can't do that here, because we have a public service institution which is subject to regulation elsewhere than this court after divestiture. And so we have attempted to set up a plan, not within the minimum requirements of compliance of Section 7 in the ordinary case, but compliance with the law in that respect and also compliance with the standards required to provide a company that will provide adequate public service in the Northwest markets that formerly belonged to Pacific Northwest, and, finally, to provide a company that will provide the competition that would have been provided had Pacific Northwest survived. That, I think, in a preliminary manner, we have presented today.

The Court: It may be understood that cross-examination of Mr. Kayser may be deferred.

Now, I am here ready to try your lawsuit. I am at your disposal. As I said before lunch, I think maybe some of you might desire some additional time. What about the Government?

[fol. 138-68] Mr. Williams: Yes, your Honor, we would require at least forty-five days, we think, to properly evaluate the plan as recently submitted to us. And, as mentioned earlier, we have asked El Paso for a considerable amount of detailed information in an attempt to an-

swer some of the questions we have in our own minds about the adequacy of the plan. They have been very cooperative in supplying us with a great deal of information. They still have some more to supply us. We would want to scrutinize it very carefully with El Paso and then we would like to come back to your Honor after we have seen to what extent first we can reach a mutual agreement as to the plan of divestiture.

The Court: You say four to five days?

Mr. Williams: About forty-five days, your Honor.

The Court: We operate here another way, four to five days. What do you need forty-five days for? You have been working on this, haven't you?

Mr. Williams: We have been working on it, but it is not a small undertaking. It is a very complicated plan, and we have asked for enormous amounts of material that we need to evaluate very carefully. We have some problems with the plan as presented. We want to carefully look at it before we reach a decision in our minds as to what position we should take.

The Court: What day was it I gave you ninety days [fol. 138-69] to work this out? What day was it?

Mr. Harrison: July 8, your Honor.

The Court: July 8. Now, it is longer than ninety days now, isn't it? August, September, October 8, so we are past the ninety days. Now, during that time you folks have been in communication, and I assume you have been working on this.

Mr. Williams: We have, your Honor, but only last week did we receive a copy of the final proposal.

The Court: That is right. That is, I suppose, when I got it.

Mr. Williams: Yes, sir.

The Court: Well, now, how soon can you folks supply the information they have requested?

Mr. Harrison: Within ten days, your Honor.

The Court: Let's set up a schedule for this. Today is the 19th. Let's say you supply that information by Monday the second of November. Can you do that, do you think?

Mr. Boyd: Yes, sir.

The Court: Now, if you have any difficulty about it, let me know. I am not going to make this a matter of an order. You undertake with me that you can do it by Monday the second, so we will accept that, but if you have problems, either one of you, take it up with me.

[fol. 138-70] Now, how much longer reasonably— Suppose the Department gets busy on this. You see, with this tremendous indebtedness—consents have been secured, and in this disturbed world we live in conditions change, and we ought to get along with this as expeditiously as we can, giving you all the opportunity to find out about it and to bring your views to the court. But I think we should move it along.

Mr. Williams: We would like to do everything we possibly can to move it along, your Honor, and we think we have moved as fast as we have been able to get adequate information from El Paso to do so.

The Court: Well, they say they will give you everything you have requested by Monday, November 2. Are you going to be asking them for anything else?

Mr. Williams: As far as I know now, we have asked them for all the information we think is pertinent to a full analysis of the proposal.

The Court: All right. Now, don't you really think you could clean up that problem in three weeks after you get that information?

Mr. Williams: We will be glad to try, but you understand, your Honor, that we intend during this period of time to conduct further negotiations with El Paso. It is my understanding that is their desire, and we are happy to do that.

[fol. 138-71] The Court: Well, suppose we give you thirty days.

Mr. Williams: Very well, sir.

The Court: From November 2. That will be December 2.

Mr. Williams: Very satisfactory.

The Court: Now, that means you will be back here—During this time I am assuming you are going to be negotiating as well as studying the problem, is that right?

Mr. Boyd: Yes, sir.

The Court: Are you going to be able to do it in that time? Your plan contemplates completion by the 31st of December. I don't think we are going to make that maybe. We might try to. That might be a deadline at which we aim. I don't know whether we are going to hit it.

Mr. Harrison: We think that what we have to do could be done by that time, your Honor. We are speaking only for ourselves.

The Court: That is by December 2, Wednesday, December 2.

Mr. Williams: We will do everything we can, your Honor.

The Court: Well, if you have a problem, let me know.

Now, the next hearing, if we are successful in this schedule, will be Friday the fourth day of December, here, [fol. 138-72] at ten o'clock in the morning.

Now, I should expect at that time that you folks would have supplied all the information the Antitrust Division of the Department of Justice asks you for, and I would expect that you both carry on negotiations to the end that you might come to some agreement about these things as far as is possible. And, thirdly, I shall expect that you folks get the examination of the material completed and your minds made up.

Now, I have asked the general counsel of the Federal Power Commission to assist us here. Is this schedule going to meet with your approval?

Mr. Solomon: Your Honor, any schedule of this court will meet with the Commission's approval, as my pleading indicates and as the testimony here indicates today. When your Honor issues an order, the next action that will be

required will be to present the matter before the Commission, and that, by our statute, will require a public hearing. If there are intervenors who want to be heard, obviously this public hearing will not be able to be completed within a matter of thirty days or anything like that. But the Commission is prepared, as soon as the New Company presents an application to it, to proceed as fast as possible to have its proceedings and to issue such certificate as it may find appropriate.

The Court: Well, I wasn't going to participate in any [fol. 138-73] way in that proceeding. That, I assume, you are going to take care of.

The chairman of the Commission was most kind and cooperative back there when we were considering the petition for an injunction in the stock acquisition. The matter was pending before you back there; it was also pending here; and the chairman wrote me and suggested that if I wanted to take it over and try the injunction matter, they would send me the half dozen carloads of exhibits.

Well, I decided maybe the Commission knew more about these things than I did and I would like to have the Commission's views, so I suggested that he proceed. And the Commission approved the asset merger with the result that we know.

Now, this time, this go-round, of course, I am not going to be interested in anything but the divestiture; but, if you can make any suggestions here, I want you to do it. If your Commission can, I want you to do it. If there is any way in which you feel you can be helpful here, let me hear from you. When we get through with the divestiture, I am going to walk out on you. I am not going to help you, but I am asking you to help me.

Mr. Solomon: As we made clear on our pleading, your Honor, there is a theoretical possibility of the plan which is ordered for divestiture here presenting problems before [fol. 138-74] the Commission. Theoretically, it is possible that any order or certificate the Commission might issue

would put such further conditions upon the plan that it would have to come back to this court for your further consideration. We hope this will not be necessary, and we have suggested in our pleading that to the extent your Honor feels free to issue a divestiture order which sets forth the general framework of an order of divestiture, but which does not get into some of the details, this might make it easier for us to accommodate our mutual problems here.

Obviously, a lot of water is over the dam, and the Commission cannot and will not now conclude that divestiture is a bad thing. It is beyond both your hands and our hands. We do feel that we have independent obligations under the Natural Gas Act, and we see no reason why they should be mutually incompatible with the divestiture order.

The Court: I think we can work together.

Mr. Solomon: Surely we can.

The Court: All right. Now, there are some intervenors here, and I am prepared to devote the next two or three weeks to hearing from you if you have anything to say. Anybody want to be heard?

Mr. Bennett: Yes, your Honor, I would like to be heard.

The Court: You may proceed.

[fol. 138-75]

STATEMENT BY MR. BENNETT ON BEHALF OF STATE OF CALIFORNIA

Mr. Bennett: My name is William M. Bennett, appearing on behalf of the state of California, and I am offering my services to the court, first of all, to be helpful, as the court suggested, because of my background with the case; and, secondly, because the state of California has a real interest in these proceedings, as it has always had.

Now, by way of background, which I think will spell out the present interest, which has never changed, this case

began when the Attorney General of California wrote a letter to Herbert Brownell, then Attorney General of the United States, suggesting that the acquisition of Pacific Northwest by El Paso was a violation of the Clayton Act, and, because of that letter, a complaint was filed here in the district court, and that was the beginning of all this difficulty.

On behalf of California, when the proceedings were instituted before the Federal Power Commission seeking to approve the asset acquisition, I appeared because of our interest in the natural gas we obtained from El Paso and followed that case through the Power Commission, through the United States Court of Appeals for the District of Columbia, ultimately to the Supreme Court (California v. Federal Power Commission), which established the proposition that this court decides antitrust matters. And then I was before your Honor again as a spectator when the antitrust case was tried, and subsequently as a friend of the court in the last decision involving this stock acquisition [fol. 138-76] and merger.

So far as California is concerned, your Honor, we take more than seventy per cent of our natural gas from the El Paso Natural Gas Company. We do not have coal or fuel oil which we can burn, and we are dependent, our people, our industry, our homes, on natural gas, which we obtain from out-of-state sources.

And the reason that we intervened in this proceeding before the Power Commission in the first place, the reason we urged the Department of Justice in 1957 to file the complaint here, was because we are convinced that there must be competition for the gas market of the state of California.

Neither the Natural Gas Act, nor as the Supreme Court has just affirmed, ever intended that there be less than competition in this field. The purpose for which the Supreme Court pronounced the violation of Section 7 has never changed. It has always been the same purpose, which

was the beginning of the complaint here, to-wit: that there ought to be a pipeline in the Northwest which can furnish competition to the El Paso Natural Gas Company so that the California market may have the benefit of competition. It is just as important in natural gas as it is in other fields.

Now, the growth of California is such that we are the greatest natural gas market in these United States. We take more natural gas than the middle Atlantic states [fol. 138-77] combined. We take the greatest quantity of natural gas flowing in interstate commerce. And the Supreme Court of the United States, in its opinion, takes note of that fact, from the brief that was filed, and comments upon it in a footnote. So that we have a great concern and a great interest to see that this divestiture is such that it is not accomplished with a degree of corporate paternalism, but that it is accomplished for the purpose that the Supreme Court enunciated in its decision.

And, because of the background of having been with the case now for almost ten years, in addition to the plea I am making to your Honor on the merits as to California's interest, I would strongly ask the court that California be permitted to intervene in these proceedings.

Mr. Harrison: May I be heard in opposition to the motion.

Mr. Meiburger: We are also going to argue our right to intervene.

Mr. Harrison: Who are you?

Mr. Meiburger: I am representing Washington Natural Gas Company. All I am saying is that if you prefer to answer the arguments individually, that is your privilege, but I thought I might accommodate you by making my argument and then you can answer all at one time.

The Court: Well, I think California stands in a little different situation. I don't know. Who owns that pipeline [fol. 138-78] company that operates up in the Northwest out of California?

Mr. Bennett: That is the Pacific Gas Transmission Pipeline, your Honor, which is really owned by the Pacific Gas and Electric Company.

The Court: What is the name of it?

Mr. Bennett: Pacific Gas Transmission Pipeline Corporation. And it was initiated, constructed, and became operational because the PG&E of California wanted some competition with the El Paso Natural Gas Company, its then sole supplier.

We have another pipeline to California, the Trans-Western Pipeline Corporation.

The Court: That is the one I was thinking of.

Mr. Bennett: That is owned by the Trans-Western Pipeline Corporation and its equity holders.

But bear in mind, your Honor, the growth of California is such that every three to five years we increase our appetite for natural gas so that the building of another pipeline is economically feasible, and as certainly as I am standing here, some day a pipeline from the Canadian gas fields, the Pacific Northwest Pipeline system, will come to the California market, as El Paso itself tried to do when it controlled the corporation.

Now, California wants to see to it here in this proceeding [fol. 138-79] that Pacific is made so independent, and independent of some of these contract arrangements I have heard about, that it can truly compete. And, if that isn't the result, then this ten years of litigation is for naught. And nobody can speak for the interest of California—I might say, your Honor, nobody can apprise you of the detailed knowledge of this case which I have acquired over a period of ten years. We hope, for example, to put on a witness here to testify concerning our ideas as to how this ought to be accomplished.

The Court: Mr. Harrison.

STATEMENT BY MR. HARRISON

Mr. Harrison: If your Honor please, this matter has been tried. The case was tried. The case was decided. It went to the Supreme Court, and now the Supreme Court has decided it. There is no trial remaining. There is the fashioning of a decree carrying out the mandate of the Supreme Court.

The question, as I understand it, at the moment is not whether any of the statements of Mr. Bennett are correct or incorrect. There is no question but what California's demand will grow and no question but what the Northwest demand will grow. There is no question but what the test of this case is the anticompetitive effect of the acquisition and the replacement of that anticompetitive effect.

We understand the United States is represented by the Attorney General of the United States. We do not [fol. 138-80] understand that, in respect to the administration of the antitrust laws, that the United States is represented by the state of California or any agent appointed by the state of California.

Under the rules, we do not believe that, the issues having been decided, that it is proper for any application—for a foreign intervenor, if I may call it that, one foreign to the issues of the case, to come in and attempt to interfere with the fashioning of the final decree by this court.

We believe the interest of California is obviously indirect. California merely sponsors, or undertakes to represent, the consumer. Its interests are no different than all the consumers of California, and I submit all of their interests are indirect.

I suggest to the court that, in the exercising of discretion, if the court feels it is a matter for discretion, that if everyone who offers his services as the guardian of customers in various areas, states, districts, for the purchase of natural gas, is allowed to intervene, this contest is going to take longer to try than the case itself, by far.

The issues are going to be complicated. The people who purport to speak for the public interest are purporting to speak to the antitrust laws, to which they have no authority to speak. The decision of the Supreme Court in this case and other decisions of this kind are not predicated upon what is in the public interest with respect to markets [fol. 138-81] or prices or service. The contrary. The Supreme Court has held repeatedly that, when they are administering the antitrust laws of the United States, the question is the anticompetitive effect, not the effect upon the public with respect to lower prices or higher prices, or any prices.

So the only question here is: Are we going to comply with the mandate of the Supreme Court, in a case in which the United States is represented by the Attorney General and in which, as I understand the decision and as I understand the cases, the question is whether the plan proposing the divestiture which is to be carried out will provide a fair substitute for the state of competition that was destroyed by the acquisition?

In any event, under the rules of civil procedure, I submit there is no legal interest which entitles a representative of California to intervene.

Mr. Bennett: May I reply, your Honor.

The Court: Yes.

Reply of Mr. Bennett

Mr. Bennett: This is a strange thing. Here we have a representative of El Paso's best and largest customer at a public hearing involving a decree and a divestiture, a man who has been associated with the matter intimately for ten years—no opposition in the Department of Justice to any intervention, and yet somehow we are to be kept out of it. But for California this case would not be here today, [fol. 138-82] your Honor.

The Court: That might have been a good thing.

Mr. Bennett: Maybe it would. Maybe it might have been.

The Court: I don't think that is very persuasive to me.

Mr. Bennett: It may not be to you, your Honor, but, fortunately, the United States Supreme Court has told the El Paso Natural Gas Company that it is subject to the restraints of the Clayton Act.

The Court: Well, we are simply to fashion a decree pursuant to a rather summary and peremptory order of the Supreme Court of the United States. What is that language, Mr. Harrison, you quoted this morning? What did the Court say? "Get the job done as soon as—" Not "as soon as it is convenient," but "Get it done."

Mr. Harrison: "We not only reverse the judgment below, but direct the district court to order divestiture without delay."

The Court: "Order divestiture."

Mr. Bennett: Yes, your Honor.

The Court: We are all through determining whether the stock acquisition or the asset acquisition was or was not in violation of the Clayton Act. That is settled. The Supreme Court settled that. And the Supreme Court has said, [fol. 138-83] "Divest." And, you know, I am going to do it, and I am going to do it without delay, Mr. Bennett. I want everybody in here who has an interest which under the rules of civil procedure entitles him to be in here. And, as I have already said to the general counsel of the Power Commission, I want folks to be in here who can be helpful to me. I don't want folks getting into hassles around here that are going to result in an impediment to doing what the Court has directed me to do.

Now, I would very much like to have you around.

Mr. Bennett: Well, I love the city, your Honor.

The Court: I have seen you in here many, many days. You are a very pleasant fellow. But what I want to know is: Where is your interest under the rules of civil procedure that entitles you to become a party to this proceeding?

Mr. Bennett: Well, of course, your Honor, I think we know the rules mean sometimes what they are construed

to mean at the moment. I am not here to delay this proceeding. I think that is a bit unfair, when you realize that all of us here stand before the court at this point having taken nine years to get here, and we are suddenly confronted with a plan which we haven't seen until four days ago.

The Court: There is no problem about that, now, Mr. Bennett.

Mr. Bennett: Yes.

[fol. 138-84] The Court: If you want to sit down and say to the court, "I would like some time before I say anything to you," why, I am going to give you some time. I told you that this morning. I would like to hear anybody who wants to be heard this afternoon. And you addressed the court in response to my suggestion. But don't tell me now that the problem is that you just got that plan last weekend, because that presents no problem here. If you need some time, I am going to give you some time. How much time do you need?

Mr. Bennett: Well, your Honor, so far as I am concerned, I don't see—I will take the same time as the Department of Justice.

The Court: All right. Now, the Department of Justice, we gave them until—

Mr. Bennett: November 2 to receive—

The Court: December 2.

Mr. Bennett: November 2 to receive the information and then December 2 to—

The Court: All right, December 2.

Mr. Bennett: Yes.

The Court: We have that time business out of the way.

Mr. Bennett: Yes, but I am in awkward position, your Honor. I am asking for time, but I don't yet know whether I am allowed to intervene.

[fol. 138-85] The Court: Well, I will tell you what: I don't know whether you are going to be allowed to intervene either. You are going to have to tell me what your interest is. If you want to study the plan before you make any

commitment on that, you are perfectly at liberty to do so. If you want to talk to me about it today, I will be glad to hear from you today. I have set aside this month, and next month, too, if it is necessary, to get this job done; and, if we can expedite anything here by hearing from you today, I would like to hear from you. If we can't, why, we will give you a little time.

Actually, I don't know—you have just made a speech to me about how familiar you are with this case. Why do you need thirty days to further familiarize yourself with it?

Mr. Bennett: Your Honor, I can't state this too strongly: This cannot be evaluated in less than the time required, and possibly even more. We must bear in mind, your Honor, that we are here now, having had this merger proposed, with an array of exhibits four or five feet high, and suddenly now the unwinding of the corporation is represented by this lengthy document, and there are a host of questions which occur as to the manner of disposition of these assets and the manner of the spin-off of the stock. I don't pretend to have all the answers and all the doubts about this. I have plenty, which time does not permit me to enumerate. But this plan must be taken, after having been worked on [fol. 138-86] since April 6 by the El Paso Company, and given to some experts to have them evaluate it for some specific questions.

The Court: I will give you thirty days. You will have until Wednesday the second of December.

Mr. Bennett: But in terms of an interest here and what my background can contribute I could talk at great length about this.

The Court: That isn't the point. What your background can contribute doesn't seem to me to represent the kind of interest that entitles you to intervene.

Mr. Bennett: Well, I can only say, your Honor, that we are supplied by the El Paso Natural Gas Company, which has properties which were acquired from Pacific Northwest, which presently are dedicated to serving the California market, and the entire base of the El Paso pros-

perity—its earnings depend upon the California market, and we have a vital interest in seeing to it that its assets are distributed not only in accordance with the Supreme Court directive, but so El Paso's obligation to California is maintained.

The Court: If you get past that Supreme Court directive, you have gotten out of my bounds, it seems to me. I am going to do what the Supreme Court told me to do.

Mr. Bennett: Your Honor, may I ask for the privilege of reducing my request to writing.

The Court: Why, certainly you may, and I will reserve [fol. 138-87] judgment on it.

Mr. Bennett: All right. I may say in closing that I didn't expect to argue this today and I was taken by surprise, but I surely would like the opportunity to put this in writing.

The Court: I don't know what you are surprised about.

Mr. Bennett: I have a low threshold of surprise, your Honor.

The Court: Pardon me?

Mr. Bennett: I have a low threshold of surprise.

The Court: Well, nobody is—I told you this morning nobody is going to be pushed in this matter. I told you that you were all going to get an opportunity to be heard. I told you two or three times that, if you needed some time—I recognize that this was presented only a few days ago. I haven't had an opportunity to read it either. You are going to get time, any of you who need it, and my only point in asking if anyone—I didn't ask you, Mr. Bennett. I said, "If anyone wants to talk to me this afternoon, go ahead." So you got up. And I don't see how you are surprised in view of that. And I reply to your statement, your suggestion, only because I don't want anything in this record to stand as any indication whatever that anybody is surprised about anything in this proceeding, because, if you [fol. 138-88] want some time, you are going to have some time.

All right, now somebody else wanted to say something. Are you surprised, too?

STATEMENT BY MR. MEIBURGER ON BEHALF OF WASHINGTON NATURAL GAS

Mr. Meiburger: Not exactly. I might be, though, before this is over.

May it please the Court, I appear specifically for Washington Natural Gas Company, a would-be intervenor. However, I might point out that much of what I will say is also applicable to the other distribution companies in the Northwest Division area, of course. Those distribution companies are Northwest Natural Gas Company, Cascade Natural Gas Company, and the Washington Water Power Company.

I should also like to state as strongly as I know how to the court that we are not in here for the purposes of delay. We are not in here for the purpose of burdening anyone, and, if permitted to intervene, we will, to the extent possible, group any participation so as not to unduly complicate things for the court and take up additional time.

Now, I will address myself to the particular inquiry that the court raised, namely, what is our interest in this proceeding?

We—and when I say "we," I am referring specifically to Washington, Washington Natural, although in some cases the same thing is applicable to the other distribution companies. Washington Natural has a 20-year gas supply [fol. 138-89] contract—had it with Pacific Northwest. That contract was assumed by El Paso, and presumably now, as a result of the divestiture, that contract will, in turn, be assigned to the New Company. Now, that is a gas supply contract. That contract is only as good as the gas supplies standing behind it, and any divestiture order of this court which would assign additional costs to the Northwest Division would have a direct and immediate effect upon the costs of the New Company. And under the regulation, under the Natural Gas Act, those legitimate costs would, of course, be passed on to the distribution companies, to Washington Natural, whom I represent.

Now, basically, on the basis of the proposal as we heard it this morning—I might also say, your Honor, that any

statement that I make to the court, of course, is made sincerely. However, it is based on information and belief, the best information that we have available to us, and in the light of the relatively short time that we have had to examine the plan."

But our problem with the proposed plan of divestiture submitted by El Paso relates to three basic questions, in the light of your inquiry. The one is a fair allocation of San Juan reserves; the second is the Kingsgate transaction, to which Mr. Boyd referred; and the third is the San Juan gathering agreement.

Now, with respect to the latter two points, El Paso [fol. 138-90] is proposing to change the contract terms which were in effect with the former Pacific Northwest Company at the time of the merger. And those changes, notwithstanding what Mr. Boyd said, we contend—and we would offer to demonstrate to this court, if permitted to intervene—are adverse to the interests of the New Company, and again directly and immediately upon Washington Natural Gas Company.

Now, how does that come about? With respect—and I might add that regulation of the New Company under the Natural Gas Act will not cure the basic problems which we think are present in the proposed plan. The first point is a fair allocation of San Juan reserves. Now, based on information available to us, we represent to the court—and we would offer to show if permitted to intervene—that, based on reports which El Paso filed with the Federal Power Commission around the time of the merger, namely, January 1 of 1960, Pacific Northwest had about 30 per cent of the San Juan Basin area natural gas reserves. Now, since the date of the merger, El Paso has acquired substantial additional San Juan reserves, none of which it proposes to assign to the New Company. These are low-cost gas reserves. And you can look on the map attached to the plan under Tab 9 and you will see that they are on the southern extremity of the proposed New Company's pipeline system, but they are also located very near the California market.

[fol. 138-91] We would also demonstrate to the court, if permitted to intervene, that the Northwest Division market requirements as a whole have grown faster than the Southern Division market requirements as a whole, notwithstanding what Mr. Bennett said. His statement may be correct as applied to California, but, based on the information we have, the statement of comparison which I made is correct.

Now, again, with respect to these new additional San Juan reserves which El Paso acquired subsequent to the merger, based on the information available to us per either pleadings or briefs or testimony submitted before the Federal Power Commission, El Paso stated that those San Juan reserves were acquired for El Paso's entire system to meet its entire market requirements.

Now, in the light of those facts, we contend that the Northwest Division, and the new company to be formed, is entitled to a fair share of those low-cost, strategically-located San Juan reserves, and that that fair allocation has to be made in the light of the traditional, historical growth in the Northwest Division and in the light of its reasonably anticipated market requirements. And we heard testimony this morning about the great potential and the great growth in the Northwest Division area. And I am not here in any way to criticize El Paso's operations when it owned and operated the Northwest Division. The fact of [fol. 138-92] the matter is, though, now, that our facts are adverse to the extent that the New Company's interests are not one and the same as the interests of El Paso and its stockholders.

Now, we do not agree with El Paso's apparent construction of the Supreme Court's opinion and mandate in the divestiture case. We contend that a fair construction of that Court's opinion requires a form of divestiture plan which would, to the extent possible and practicable, put the New Company back in the position that it would have been in in the absence of the merger with respect to the San Juan gas reserves.

Now, San Juan gas is 14 cents. That is about the lowest cost gas—I don't say it is the lowest, but it is among the lowest cost gas on the El Paso system, and, again, it is strategically located with respect to the California market; and, of course, those market requirements are extensive.

I might also point out to the court that in the merger proceedings before the Federal Power Commission it was recognized that, as a result of the merger, of course, there could, in fact, be no competition for San Juan Basin area reserves. So El Paso is now taking the position that those total additional San Juan reserves were acquired for the benefit of the Southern Division only.

Now, we contend that the court is the proper forum to [fol. 138-93] determine that question. That question can't be determined before the Federal Power Commission. We, of course, are very happy to see the Federal Power Commission in here, but the fact of the matter is that that fair allocation question—we don't see how that can be determined by the Federal Power Commission. Now, the Federal Power Commission can give the court a lot of assistance. That is up to the court and the Federal Power Commission to determine. But, as far as actually determining the legal question, this is the only forum in which that question can be determined. A determination of that question per approval of the plan by the court—that question will be res judicata to us to the extent that it represents a low-cost supply of gas in contrast with the Canadian supply of gas, which is much higher cost. We will be adversely affected cost-wise and we will also be adversely affected gas supply-wise, because we are not receiving what we contend, and what we would show to the court, is our fair share of San Juan gas supplies. And, again, that contract with that New Company is only as good as the gas supplies supporting it.

I might point out that we do not agree with the statement contained on page 5 of the proposed plan and which was referred to this morning by Mr. Boyd, wherein he makes a comparison of the reserve life index for the New

Company and the reserve life index for the Southern Divi-
[fol. 138-94] sion in what will then be El Paso.

At first blush that appears to be equitable, but, again, based on information available to us at this time, if permitted to intervene, we would hope to demonstrate and would offer to show to the court that at the time that El Paso acquired the control of Pacific Northwest, Pacific Northwest was, relatively speaking, in a better gas supply situation than was El Paso. El Paso was having gas supply problems at that time.

Secondly, reserve life index is by no means a controlling criterion for determining gas supplies. It is one of the determinants for gas supplies.

But, more importantly, what that reference on page 5 of the proposed plan overlooks is the tremendous cost differential, as I will get to a little bit later. El Paso apparently takes the position that we should rely to a greater extent upon higher cost Canadian gas supplies.

Well, the Canadian gas supplies cost approximately—that is, the Kingsgate gas supplies cost approximately 29 cents delivered into the Northwest Division pipeline facilities. Now, the San Juan gas supplies cost approximately 14 cents at the wellhead. Now, it would cost some additional work to transport that San Juan gas to market, but it wouldn't cost anywhere near 29 cents to get it to the market where it could be utilized.

[fol. 138-95] I might also point out that, again based on information available to us—

The Court: Well, you see, the trouble I am having with this argument is that I haven't anything to tie to. You keep saying "based upon information available to us," or "upon information and belief." If we get right down to the evidence in the matter, then the court can get his teeth into it, but I don't know how to proceed when you base every statement you make upon the assertion that you don't know anything about it, but "on the information you have or information and belief." I am just wondering if you have any evidence.

Mr. Meiburger: Yes, your Honor. I might say that it appears—I will strike the word "appears." But much of the presentation which Mr. Boyd made this morning also appears in a pending certificate proceeding before the Federal Power Commission.

Now, I realize you are not trying the Federal Power Commission case, and, obviously, the Federal Power Commission is not going to try your divestiture proceeding here, but we do have some information, and I just hestitate —I can give you an example.

The Court: Well, no, I don't think there is any point in pursuing that. If you have any solid foundation for claiming an interest here, I think perhaps the starting point is to let me see the evidence of it and then you make whatever [fol. 138-96] argument about it you want.

I am wondering—what you have been saying sounds to me as though it is information you ought to give the Department of Justice.

Mr. Meiburger: Your Honor, with all due respects to the Department of Justice again—

The Court: Well, I must say I am with you in most of—if I got the drift of what you were about to say.

Mr. Meiburger: The Department of Justice we do not believe is the person directly, immediately, and adversely affected by the proposed divestiture plan.

The Court: Oh, brother, I can't agree with that. The Department of Justice is charged with the responsibility of the enforcement of the Clayton Act, charged by law, the Constitution of the United States, and that is a pretty sizable interest, it seems to me.

Mr. Meiburger: But it is not the interest of the person, the contracting party, the party contracting with what is now El Paso and what will be the New Company, and any impairment of that contract, either service-wise, gas supply-wise, or adverse cost impact-wise, will have a direct and immediate impact upon this would-be intervenor.

The Court: We are not trying a lawsuit sounding in special assumpsit, the violation or anticipated violation of a contract. We are here to form a decree of divestiture.

[fol. 138-97] The Supreme Court settled all the questions about that. The Supreme Court said, "Divest. This is a violation of Section 7 of the Clayton Act."

Now, if the Department of Justice is satisfied— Let's just assume that the Department of Justice, the Antitrust Division, is satisfied with the proposal for divestiture the El Paso company has handed up, and the court, based upon that agreement and stipulation, enters a decree. What interest do you folks have in that?

Now, sure, I understand you have gas users up there, you have gas distributors up there, you want to protect the citizens of Washington in the performance of the contracts in the supply of gas. But what has that to do with this proposal?

Mr. Meiburger: Your Honor, may I give you one additional concrete example.

The Court: Surely.

Mr. Meiburger: The old contract between the two companies, the so-called San Juan joint gathering agreement—

The Court: Yes, I remember that.

Mr. Meiburger: (Continuing) —to which Mr. Boyd referred, specified a gathering charge of, let's say, slightly in excess of one cent per Mcf of the net volumes to be gathered. The proposal by El Paso for the New Company specifies a charge of four and a half cents, would provide a charge of four and a half cents. So there you have about [fol. 138-98] a three-cent increase.

Now, since the volumes to be gathered by the New Company, or on behalf of the New Company, are at least double, and possibly triple, those that would be gathered by or for El Paso, the greater cost impact would fall upon the New Company. And we estimate that additional cost to be, roughly, about one million dollars a year. And those are substantial dollars.

The Court: Mr.— What is your name, sir?

Mr. Meiburger: Meiburger.

The Court: Wineburger?

Mr. Meiburger: Meiburger.

The Court: Mr. Meiburger. Suppose what you say is true, just assume it is, but also let's assume that after hearing all the evidence in this matter and the arguments, and giving these folks a full opportunity to negotiate one with the other, and after whatever modifications there may be if this thing comes before us again on agreement, stipulation, and the court studies it and approves it, who could complain about that in this proceeding?

Now, maybe in some other proceeding somewhere, somehow, you may find an opportunity, but this proceeding is for a very limited purpose, and that is to formulate the decree divesting Pacific Northwest from El Paso, if you [fol. 138-99] want to speak about it in large, wide terms.

Now, suppose we all agree, the Department of Justice and the court agree with El Paso that this is a sound, fair, equitable, generous—let's assume that one—a conscientious attempt to create a company that is as near as may be what Pacific Northwest had before the stock acquisition or the asset acquisition, or both. Now, suppose we come to that conclusion, that this is practical, that it is fair, that it is honest and conscientious, that indeed there are gas supplies and reserves and financing and management, all in a new company that is in a splendid position to do just what you want done up there about serving your customers. Now, if that be true, what complaint can you have?

Mr. Meiburger: We would have no complaint if that determination were made after we had an opportunity to be heard, because if the court increases that gathering charge from 1.375 cents to four and a half cents, we are the ones who are going to pick up the tab for it; and, if we are going to pick up the tab for it, we feel that we ought to at least be heard before you permit them to charge us four and a half cents instead of one cent.

The Court: You are picking out one contract out of a whole scheme, out of all of that testimony Mr. Boyd gave us this morning, which seemed to me to be given very fairly, honestly, a strong statement, conscientious. And Mr. Kay-

ser. Mr. Kayser's statement was strong, knowledgeable, [fol. 138-100] it seemed to me, in very good conscience, particularly the last two or three sentences where he said, "I want to say for the Company: 'We got burned once, and we don't want to get burned again, and we are going to do it just as fairly as we know how, and create a strong company, a company up there that will be competitive, because these mergers, both the stock and the asset mergers, were struck down fundamentally because the Supreme Court found a substantial lessening of competition. Now, we are aiming to create that company so there won't be that lessening of competition any further.'"

Mr. Meiburger: Would this be more acceptable to the court— You made a reference earlier to the fact that I was making assertions based on information and belief.

The Court: Well, you said that.

Mr. Meiburger: Well, that's right, but you made a reference to the fact that I was doing it.

The Court: That's right.

Mr. Meiburger: Would it be more acceptable to the court for me to submit a document of the evidence that we propose to offer relating to the three basic objections that we have to the proposed plan, and perhaps at that time the court would have a better idea of the points we are trying to make, rather than the oral statement which I am now making?

The Court: I think it would be a good idea, Mr. [fol. 138-101] Meiburger. Let's see, we are here on the 19th. Say by the second of December you submit in writing what your evidence is and what your argument is and what your law is, and submit it to the court on the second day of December and submit it also to counsel on the other side, and I will reserve my ruling on this matter.

Mr. Meiburger: Thank you, your Honor.

Mr. Harrison: May I suggest to the court that the memoranda which will be submitted by applicants for intervention be given to us a little before December 2 so that we may review it.

The Court: Can we agree to do that?

Mr. Meiburger: Yes. We will undertake to do it.

The Court: How much sooner do you think you can do it?

Mr. Meiburger: Is two or three days enough?

Mr. Harrison: No.

Mr. Meiburger: How much time do you want?

The Court: Well, I am trying to accommodate you.

Mr. Meiburger: Yes.

Mr. Harrison: I suggested to counsel the thirty days.

Mr. Meiburger: I think that would be agreeable.

The Court: Do you want thirty days?

Mr. Meiburger: We will take thirty days.

[fol. 138-102] The Court: That brings us—thirty days from today is the 19th of December. That is satisfactory?

Mr. Meiburger: November.

The Court: I am sorry. We are talking on Monday the 19th of October. That will be the 19th of November. Well, that is pretty good. From the 19th of November to the second of December you folks will have an opportunity to look at it. Is that satisfactory to you?

Mr. Harrison: Yes, your Honor.

The Court: All right. On the 19th of November, Mr. Meiburger, will you serve on the other side—by the "other side" I mean El Paso and the Government as well. I think you ought to give the Government a copy of it.

Mr. Meiburger: We will do that, your Honor.

The Court: And I don't know whether the intervenors, the rest of them, want copies of this or not. We will find out after a bit. If they do, supply them. We will expect that here in the clerk's office on the 19th.

Mr. Meiburger: Thank you.

The Court: Very well. That embraces your evidence and your argument.

Mr. Meiburger: Right. Thank you.

The Court: Now, Mr. Bennett, I am going to ask you to do the same thing.

Mr. Bennett: Yes, your Honor. I will be happy to do it. [fol. 138-103] Mr. Sabin: Your Honor, I am Richard Sabin from the state of Oregon. May I have the same privilege.

The Court: Yes, certainly. And is there anything you want to say to me today?

Mr. Sabin: I think not, since you have accorded us that privilege.

The Court: All right. Will you serve your memoranda, whatever they may be, upon the Government and El Paso and have a copy in our clerk's office on the 19th day of November.

Mr. Sabin: I will, your Honor.

The Court: I think perhaps that is the way to proceed with all of the people who have filed petitions for intervention, or motions for intervention, whatever they may be. If there is anybody who thinks that isn't the situation, why, stand up and tell me. I am not trying to foreclose anybody from saying anything, and I don't want to surprise anybody.

Mr. Bennett: Your Honor—

The Court: Yes, Mr. Bennett.

Mr. Bennett: May I respectfully make this statement: We are asking that we be permitted to intervene—

The Court: You have already asked me.

Mr. Bennett: Yes, I realize that.

The Court: You have already made your requests. What [fol. 138-104] I want you to do is support that request with everything you have.

Mr. Bennett: I realize that, your Honor.

The Court: With all your power and might put in writing your support for it, so I can get my eye on it.

Mr. Bennett: But what I am getting to is this, your Honor: If perchance intervention be granted—and we have said something about that this morning—then, so far

as California is concerned, we contemplate producing evidence to your Honor through witnesses and various documents.

The Court: That's right.

Mr. Bennett: I would apprise your Honor now that, depending upon whether that intervention be granted or not, then, and only then, would we prepare witnesses, who are expensive, and some of whom are in Washington, D. C. So it seems to me we should be entitled then, after intervention is granted, to some additional time to bring forward some witnesses here. And I think I am not speaking just for myself, but for some other would-be intervenors here.

The Court: Well—

Mr. Harrison: I would suggest if counsel has the subject matter of the evidence he proposes to submit, he ought to put that in writing. I don't think he ought to intervene having not found out what those witnesses would reveal that he has not hired yet.

[fol. 138-105] The Court: Yes, I would think there is something a little defective about your petition, but I am not going to stand on that. I want you to prepare that memorandum for me.

Mr. Bennett: I am just pointing out to the court that we would like to present a witness, but we ourselves are entitled to some degree of notice on these things, which seems to me basic fairness, if nothing else.

The Court: Well, I really don't get the point of that observation. Will you point that up for me.

Mr. Bennett: Yes, your Honor.

The Court: On the basis of what unfairness?

Mr. Bennett: No, basic fairness, your Honor.

The Court: But your implication is that you are being treated unfairly.

Mr. Bennett: No, not at all, your Honor. I am just hoping to avert that possibility in the future. I have not said anything about your unfairness. I am just hoping, with the assistance of the court, to avert that in the future.

The Court: Well, what would you think now— We have agreed, haven't we, that the 19th of November all of the intervenors are going to give me supporting memoranda, and there is where you are going to get your opportunity to present your views to this court. I want that memoranda to include your evidence, I want it to include your argument, I want it to include the law. I want you to prepare a [fol. 138-106] memorandum, each one of you, that with all your power and might presents your claim and the basis for it, to be admitted as an intervenor in this lawsuit. Now, that is on the 19th.

Now, I don't see anything wrong with requiring you all to be prepared on Wednesday, the second of December, when the Department of Justice and the El Paso people are coming in here for a hearing—I don't see anything unfair. If there is anything unfair to any one of you, why, feel perfectly free to tell me about it, because I have already told you I am not going to push anybody in this matter, and it may be that we can't proceed with the expedition that we like. And, if we can't, we can't, that is all. We will proceed as expeditiously as we can. But suppose we set everything down for hearing on Wednesday the second, including petitions for intervention, motions for intervention. Is there anything the matter with that?

Mr. Bennett: Your Honor, may I ask this question: Is it contemplated at that time that California will have here its witnesses? That is my question.

The Court: Well, if that is the hearing date, you had better have.

Mr. Bennett: And that is the date we will know whether we are permitted to intervene, I gather?

The Court: I didn't say that. I said that is the date we are going to hear the witnesses.

[fol. 138-107] Mr. Bennett: I presume if we are putting on witnesses we are allowed to intervene.

The Court: Well, what I am trying to find out in each case, the case of each intervenor, is whether you are

entitled to intervene. Those are the witnesses I am talking about.

Now, if I let anybody in here on a petition to intervene, maybe we have got to set some more hearing dates. But what I want to hear on Wednesday the second—so that everybody may be perfectly clear about it—is: Show me your right to be admitted in intervention in this case, show me that on Wednesday the second. But before that, you give me those memoranda so I can have a look at them beforehand.

Mr. Bennett: Thank you, your Honor.

The Court: And if you have any witnesses bearing on that question of whether you are entitled to be admitted in intervention, why, you had better have them here on Wednesday the second, because that is the day we are going to hear that.

Now, if you are admitted as an intervenor in this case, what is going to happen after that I don't know. We haven't gotten to that point yet. We are going to take this a step at a time.

Mr. Sabin: Your Honor, may I be heard on that point.

[fol. 138-108] The Court: Surely.

Mr. Sabin: On behalf of the state of Oregon I would strenuously object to deferring ruling on intervention up to the moment of trial. As Mr. Bennett points out, witnesses are expensive. While we have some on our payroll, some we will have to hire. We don't want to spend that sort of money if the intervention is going to be denied.

The Court: Well, I suspect the state of Oregon is going to be able to pay for the witnesses down here.

Mr. Sabin: I might add, your Honor, that we are in budgetary trouble all the time in our office.

Mr. Hooper: Richard B. Hooper, Cascade Natural Gas Corporation.

The Court: Yes.

Mr. Hooper: Is this a separate hearing from the hearing which your Honor set on December 4?

The Court: I didn't set anything for December 4 today.

Mr. Harrison: I think your Honor slipped once this morning and said "four," but meant "two."

Mr. Hooper: Your Honor specifically said "Friday, December 4."

Mr. Harrison: He specifically said "Wednesday," too.

Mr. Hooper: That was a date set for the submission—

[fol. 138-109] The Court: We don't need to debate that. Which date do you want?

Mr. Williams: The second is very satisfactory for the Government.

The Court: I am not trying to shorten up your time two days. I don't care whether it is the second or the fourth. Is Wednesday the second satisfactory to you all?

Mr. Harrison: Satisfactory.

The Court: All right, let's clear that one up. Is there anything else anybody wants to say to me?

Mr. Williams: I have one point I want to make. There has been some misunderstanding as to what the Government's position is on intervenors. We do not propose to argue it at this time, but we think your Honor's action is a very good one.

We would be opposed to intervention as such, but we welcome the opportunity of the court to hear the position of particularly the regulatory agencies in various states. We think the court is entitled to hear their views, and we welcome that. But we will argue this later when the court reaches that decision. We would be opposed to intervention as such, but we will not go into the reasons now. There is a difference between being a friend of the court, as your Honor knows—

The Court: I kind of gather there is a difference between [fol. 138-110] one of these intervenors and a friend of the court. That may or may not turn out to be true.

Well, actually, you know, the intervenors do not fall into one class by any means. Now, there are some gas distribution companies involved up in Oregon and up in

Washington and down in California and here in Utah that are represented here, I see. Now, if they have motions for intervention, that is one group, people who are going to be buying this gas from the New Company, or from El Paso, whichever area they are operating in, and then distributing it to the ultimate consumers. That is one group of intervenors.

Another group of intervenors, and I think maybe they stand pretty much in the same position, not quite, as the Federal Power Commission, and that is the regulatory agencies of Washington and Oregon and Idaho, California, and the various states that may be concerned.

Now, counsel has advised me here today, as you have heard, that in a proceeding of this kind—well, not limited to a proceeding of this kind—but the Federal Power Commission is the regulatory agency from which a certificate must be obtained, and that certificates need not be obtained from the regulatory agencies of the states through which the pipeline may travel. So, while those regulatory agencies are not in quite the same situation—but I don't know too much about this—I am rather inclined to think that those regulatory agencies ought to have an opportunity to explain [fol. 138-111] to me why they want to come in here. So we are going to let them do it.

Mr. Ripley: I am Larry O. Ripley of the Idaho Public Utilities Commission, and I believe we can give you a general outline as to why we wish to intervene at this time.

The Court: Well, we have gotten past that for this afternoon. How does it suit you to do what we have suggested that the other folks do?

Mr. Ripley: It is very fine, your Honor.

The Court: And give me everything you have in it.

Mr. Ripley: That will be fine.

The Court: In support of your position.

Mr. Ripley: Thank you, your Honor.

The Court: Now, there is another group of people here who have intervened that I want a memorandum from. I

haven't the file before me. But some folks are petitioning or moving for intervention here who are not regulatory agencies, they are not gas distribution companies who serve the consumers, they are not states, Washington, Oregon, Idaho, California, but they are people who have an idea they would like to buy this property. By "this property" I refer roughly, and roughly only, to what has been called "New Company."

Now, I am going to have to be persuaded about the interest of people of that sort here. I don't see what [fol. 138-112] interest they have, except to get hold of an income-producing property for investment purposes.

So, if I am mistaken about that, or if I am not, I wish you would prepare memoranda also and have the memoranda in here at the same time. I would like to see your interest, why you should be entitled to intervene in this case, why you should be entitled to come in here and argue that what the Department of Justice and El Paso may agree upon and what the court approves ought to be set aside to enable you to buy something. I would like to see that interest. I would like to see the supporting evidence, the law, and argument.

Well, now, is there anything else we can do today?

Mr. Meiburger: Your Honor, you mentioned earlier about submitting copies of whatever we might submit to you to other people who wanted them.

The Court: Yes.

Mr. Meiburger: Would there be any problem in perhaps —maybe we could avoid a little confusion if it were understood that copies of all pleadings were to go to all would-be intervenors, as well as to the parties. Otherwise we might have problems. I would have to make a request, for example, to each one who might be filing and from whom I would like to receive a copy.

The Court: Well, you fellows aren't in here yet, so I don't want to make too many orders about what you should [fol. 138-113] be doing, but I should think it would be a

courteous thing to do if you all, all you possible intervenors, would exchange these memoranda. All I can say to you is that you are not parties to this lawsuit and your motions and petitions have not been granted. They are not going to be granted or denied until I have those memoranda and until I hear you, if you have any evidence. So I don't think I am going to enter any order about that. If you folks want something from some intervenor—I would think your interests were all common interests. I wouldn't think you would all want to see each other's documents, but maybe I am mistaken about that. But, if you do, you can communicate with each other. I am not going to make any order about that.

Is there anything else? Any further suggestions of any kind? Mr. Bennett?

Mr. Bennett: No, sir. I am enveloped in silence, your Honor.

The Court: All right, gentlemen, thank you very much.

* * * * *

[fol. 138-114] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 139]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

Judge Ritter

C 143-57

UNITED STATES OF AMERICA

—vs—

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINES COMPANY

MINUTES—October 19, 1964

This matter came before the court at 10:00 a.m. for hearing on proposals for divestiture and on applications to intervene heretofore filed.

Counsel present were Robert L. Simpason, Esq., representing The Washington Water Power Company; Richard B. Hooper, Esq., representing Cascade Natural Gas Corporation; Richard A. Solomon, Esq., representing Federal Power Commission; William M. Bennett, representing State of California; Robert E. Simpson, Esq., representing Washington Utilities and Transportation Commission; Larry D. Ripley, Esq., representing Idaho Public Utilities Commission; John W. Chapman, Esq., representing Washington Natural Gas Company; George J. Meiburger, Esq., representing Washington Natural Gas Company; A. W. Sandack, Esq., representing Washington Natural Gas Company; Rex J. Hanson, Esq., representing Northwest Natural Gas Company; Harold W. Pierce, Esq., representing Northwest Natural Gas Company; Richard W. Sabin, Esq., representing the State of Oregon; Joseph S. Jones, Esq., representing Mountain Fuel Supply Company; Paul B. Cannon, Esq., representing Pacific Western Pipeline Corporation; S. N. Cornwall, Esq., representing El

Paso Natural Gas Company; Leon M. Payne, Esq., representing El Paso Natural Gas Company; Paul H. Ray, Esq., and A. H. Nebeker, Esq., representing Pacific Northwest Pipeline Corporation; Gregory A. Harrison, Esq., and Robert S. Daggett, Esq., representing El Paso Natural Gas Company; Richard W. Sabin, Esq., representing the State of Oregon; Henry F. Lippett, Esq., representing California Gas Producers Association; Robert Y. Thornton, Esq., Attorney General of Oregon; Calvin W. Rawlings, Esq., Associate Attorney for Paradox Production; C. Keefe Hurley, Esq., Earle C. Cooley, Esq., Brigham E. Roberts, Esq., associate attorney for Paradox Production; David K. Watkiss, Esq., local counsel for State of Oregon; Larry L. Williams, Esq., Department of Justice; Jack L. Lipson, Esq., Lawrence F. Noble, Esq., Department of Justice; Allyn Bingle, Esq., State of Idaho; Ronald Boyce, Esq., associate counsel for State of Oregon.

William T. Thurman, Esq., United States Attorney, introduced Larry L. Williams, Esq., Department of Justice, Washington, D. C., as counsel for this case only. Move for admission was granted.

S. N. Cornwall, Esq., moved the admission of Robert S. Daggett, Esq., as counsel for this case only. Motion granted.

A. Wally Sandack, Esq., moved the admission of John W. Chapman, Esq., George J. Meiburger, Esq., and Robert L. Simpson, Esq., for this case only. Motion granted.

Rex Hanson, Esq., moved the admission of Harold W. Pierce, Esq., for this case only. Motion granted.

Brigham E. Roberts, Esq., moved the admission of William M. Bennett, Esq., C. Keefe Hurley, Esq., and Earle C. Cooley, Esq., for this case only. Motion granted.

[fol. 140] David K. Watkiss, Esq., moved the admission of Richard W. Sabin, Esq., for this case only. Motion granted.

William T. Thurman, Esq., United States Attorney, moved the admission of Richard A. Solomon, Esq., for this case only. Motion granted.

Gregory A. Harrison, Esq., counsel for El Paso Natural Gas Company, addressed the court relative to a plan of divestiture.

Howard Boyd was called by El Paso Natural Gas Company and questioned by Mr. Harrison.

The hour of 11:35 a.m. having arrived, the court declared a ten minute recess.

At 11:45 a.m. Mr. Boyd resumed the stand and counsel for the plaintiff offered exhibit No. 1, which was marked and received. The clerk declared that this exhibit had been filed with the clerk on October 15, 1964.

Upon motion of the Federal Power Commission to appear as Amicus Curiae, motion granted.

The hour of 12:30 p.m. having arrived, court adjourned until 2:00 p.m.

Court reconvened at 2:00 p.m. Mr. Boyd resumed the stand and was questioned by Mr. Harrison. Upon motion of counsel for the government it was ordered that cross examination would be deferred.

Paul Kayser was called by El Paso Natural Gas Company and was questioned by Mr. Harrison. Upon motion of the government, cross examination of Mr. Kayser was ordered deferred.

The government moved that it have forty-five (45) days in which to evaluate the adequacy of the plan of divestiture and for additional information to be supplied by El Paso Natural Gas Company. It was directed by the court such information be supplied by November 2, 1964, and that a hearing would be held thereon December 4, 1964, at 10:00 a.m. Mr. Solomon, on behalf of the Federal Power Commission, stipulated that the schedule was satisfactory.

William M. Bennett, Esq., counsel for the State of California, addressed the court relative to the motions to intervene. Mr. Harrison responded in opposition thereto. Mr. George J. Meiburger, Esq., also moved for leave to intervene. The court reserved its ruling on the motions to intervene and ordered that statements of evidence and memorandum of law be submitted on or before November

19, 1964, and served upon counsel, and that the same would be set for hearing on December 2, 1964.

[fol. 141] cc: Robert L. Simpson, Esq., 602 Spokane & Eastern Bldg., Spokane, Washington; Richard B. Hooper, Esq., 1000 Norton Bldg., Seattle, Washington; Richard A. Solomon, General Counsel, Federal Power Comm., Washington, D. C.; William M. Bennett, Esq., State Bldg., San Francisco, California; Robert E. Simpson, Esq., Temple of Justice, Olympia, Washington; Larry D. Ripley, Esq., State House, Boise, Idaho; John W. Chapman, Esq., 1415 Joseph Vance Bldg., Seattle, Washington; George J. Meiburger, Esq., 821—15th St., N.W., Washington, D. C.; A. W. Sandack, Esq., 606 El Paso Natural Gas Bldg., Salt Lake City, Utah; Rex J. Hanson, Esq., 909 Kearns Bldg., Salt Lake City, Utah; Harold W. Pierce, Esq., 735 S. W. Morrison, Portland, Oregon; Richard W. Sabin, Esq., 103 Public Service Bldg., Salem, Oregon; Joseph S. Jones, Esq., 800 Walker Bank Bldg., Salt Lake City, Utah; Paul B. Cannon, Esq., 920 Continental Bank Bldg., Salt Lake City, Utah; S. N. Cornwall, Esq., 65 South Main, Salt Lake City, Utah; Leon M. Payne, Esq., 25th Floor Humble Bldg., Houston, Texas; Ray, Quinney & Nebeker, 300 Deseret Bldg., Salt Lake City, Utah; Gregory A. Harrison, Esq., 111 Sutter Street, San Francisco, California; Robert S. Daggett, Esq., 111 Sutter Street, San Francisco, California; Richard W. Sabin, Assistant Attorney General, 103 Public Service Bldg., Salem, Oregon; Henry F. Lippett, Esq., 611 Wilshire Blvd., Los Angeles, California; William T. Thurman, Esq., U. S. Attorney, 200 P.O. & Courthouse Bldg., Salt Lake City, Utah; Jack Louis Lipson, Esq., Dept. of Justice, Washington, D.C.; Arthur H. Dean, Esq., 48 Wall Street, New York, New York; Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., Salt Lake City, Utah; James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington; Keith Sohm, Esq., 301 State Capitol Bldg., Salt Lake City, Utah; Brigham E. Roberts, Esq., 530 Judge Bldg., Salt Lake City, Utah; C. Keefe Hurley, Esq., 60 State Street,

Boston 9, Massachusetts; Virgil H. Wedge, Esq., First Natl. Bank of Nevada, 1 East 1st St., Reno, Nev.; Larry Pankonien, Esq., Box 2511, Houston, Texas; Robert L. Simpson, Esq., 602 Spokane and Eastern Bldg., Spokane, Washington; Gustin, Richards & Mattsson, 1107 Walker Bank Bldg., Salt Lake City, Utah; Roger J. Nichols, Esq., Box 3249 Terminal Annex, Los Angeles, California; John T. Murphy, Esq., & Richard E. Tuttle, Esq., Public Utilities Comm. of State of California, 5072 State Bldg., San Francisco, California; A. Fred Miller, Esq., Office of Attorney General, State of Wyoming, 210 Supreme Court Bldg., Cheyenne, Wyoming; Richard E. Peterson, Esq., 245 Market Street, San Francisco, California; Bryce E. Roe, Esq., Continental Bank Bldg., Salt Lake City, Utah; Marcus, Leggat & Marcus, 625 First National Bank Bldg., Boise, Idaho; Harvey Dickerson, Attorney General, State of Nevada, Carson City, Nevada.

[fol. 142]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Intervenor.

AMENDED APPLICATION FOR LEAVE TO INTERVENE AND CLAIM FOR WHICH INTERVENTION IS SOUGHT—Filed October 19, 1964

Comes now the Washington Utilities and Transportation Commission, a legally constituted agency of the State of Washington, and respectfully applies by this amended application for leave to intervene in the above-entitled proceeding pursuant to Rule 24 of the Federal Rules of Civil Procedure. This application is submitted as parens patriae on the following grounds and for the following reasons:

I

Applicant, under the laws of the State of Washington and more specifically under the provisions of RCW 80.04.040, is charged with the duty of regulating in the public interest the rates, services, facilities and practices of companies engaging within the State of Washington in the business of supplying any utility service or commodity, including natural gas, to the public for compensation. Ap-

[fol. 143] plicant is further charged by the provisions of

[File endorsement omitted]

RCW 80.28.020 with the duty of determining just and reasonable rates and practices to be observed by such companies supplying natural gas to the public for compensation. Applicant represents the interests of users and consumers of the services and products of such companies in controversies before any federal court or commission involving matters affecting rates and practices of such companies in order to protect such users and consumers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service under just and reasonable rates and practices.

II

At the present time several natural gas distribution companies are engaged in supplying gas utility service to consumers within this state. The cost of service for these companies upon which just and reasonable rates and charges are predicated in large part, is materially affected by the level of rates and charges imposed by their supplier. Their ability to meet the requirements of their customers is dependent upon the availability of adequate gas reserves, at reasonable costs, of their supplier.

III

Prior to the merger of El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation, the latter was the sole supplier of natural gas to distributing companies engaged in gas utility service in the State of Washington. Since the merger of the defendant corporations, El Paso Natural Gas Company has been, and continues to be, the sole supplier of natural gas to this state. In 1963 gas distribution companies in this state purchased from such supplier 87,500,874,000 cubic feet of natural gas and the [fol. 144] volume of such purchases is steadily increasing.

IV

On April 6, 1964, the Supreme Court of the United States issued its decision on the appeal of the above-entitled case wherein it was found that El Paso Natural Gas Company unlawfully acquired the stock and assets of Pacific Northwest Pipeline Corporation and directed this court to order divestiture without delay. However, no guidelines were given as to the manner in which the Supreme Court's mandate was to be implemented.

V

Inasmuch as the decision of the Supreme Court herein did not prescribe the method by which divestiture is to be accomplished, applicant is so situated as to be adversely affected by the details of disposition of the property herein which is subject to distribution or disposition by the court. The plan for divestiture must necessarily result in the creation of an entity having a capital structure, investment, management and gas supply, which will dictate to a large extent its ability to continue service under reasonable rates and practices as they affect the interest of consumers in the State of Washington and to become once again so constituted as to be able "to exploit its formidable position vis-a-vis California." The method of divestiture will establish conditions which the federal regulatory agency for all practical purposes must accept and in turn will establish conditions under which rates and practices to customers within the State of Washington must be established. Consumers and users in the State of Washington, and applicant, will therefore be bound by any order establishing the method of divestiture. It is not the intention of applicant [fol. 145] to inject the issue of level of rates into the instant proceeding, either to the distribution companies or to the ultimate consumer. The determination of divestiture methods which will irrevocably establish conditions under which rates are to be made, however, is a matter of vital concern to applicant in the discharge of its responsibilities.

VI

There is no other party to the above-entitled proceeding which can adequately protect the interest of the people of the State of Washington in that Pacific Northwest Pipeline Corporation has been completely merged into El Paso Natural Gas Company and is therefore not in a position to protect its own interests or the interests of the public previously served by it in the State of Washington; that El Paso Natural Gas Company has interests in the disposition of assets presently subject to the jurisdiction of this court which are in conflict with the interests of applicant and the people of the State of Washington; that while the United States acting by and through the Attorney General is properly characterized as the guardian of the public interest so far as the competitive aspects of antitrust litigation and divestiture are concerned, applicant does not believe the position of the United States to be one of primary concern with the significance of some of the many details involved in divestiture as they vitally affect the best interests of the users, consumers and general public within the State of Washington from the standpoint of rates and service.

VII

At the time of filing its initial application for intervention herein, applicant was unable to set forth a claim or defense within the contemplation of Rule 24 for the reasons [fol. 146] set forth in paragraph IX of said application. Applicant is not aware even now whether El Paso has filed any pleadings constituting a detailed plan of divestiture but applicant did receive from El Paso October 14, 1964, a document purporting to be a general outline of its divestiture proposal. Such general outline is remarkable for its lack of disclosure on many matters as to which applicant has a real, substantial and legitimate concern and as to which only El Paso has custody of the records which must be made available if such details are to be disclosed. The

outline does raise, however, certain matters as to which applicant is not only concerned but based on the present sketchy information appear to be contrary to the requirements of divestiture under the facts surrounding this proceeding. These matters include:

(1) Failure to divest to the new company a proper share of gas reserves acquired or developed in the San Juan Basin following Pacific's acquisition by El Paso and subsequent merger into El Paso; any plan of divestiture must divest to new company a fair share of these post-merger San Juan Basin reserve increases.

(2) Failure to reinstate a contract applicable to disposition of Kingsgate Gas to El Paso in terms comparable to those negotiated between Pacific Northwest and El Paso preceding merger as contained in Pacific's supplemental application in FPC Docket No. G-17350, being the Kingsgate proceeding.

(3) Failure of El Paso to reflect in new company return of El Paso's reduction in federal income taxes [fol. 147] by virtue of utilization of Pacific's tax loss carry forward.

(4) Failure to submit full information from which it can be determined whether El Paso's proposed method of distribution of new company's common stock to El Paso stockholders will result in a continuing common control of the two companies, this failing to assure the complete independence of new company from control by El Paso stockholders.

(5) Failure to disclose identity and qualifications of proposed board of directors and management of new company. Such information is essential before any determination can be made as to managerial sufficiency and independence of new company.

(6) Failure to present a realistic projection of gas requirements for the service area of new company. The schedule under Tab 8 of El Paso's outline apparently assumes a declining gas requirement after 1967 and 1968 contrary to any informed estimate based on actual experience. This portrayal raises further questions as to viability of new company as El Paso would propose to constitute it.

(7) Failure, without any attempted explanation of the reason therefor, to divest to new company the remaining stock of West Coast Transmission Company held by El Paso, which stock was acquired by El Paso through the acquisition and merger of Pacific Northwest.

[fol. 148] The foregoing items are not intended to be all-inclusive of the matters of concern of applicant. These particular items do immediately arise from a consideration of El Paso's sketchy proposal which was received only 4 or 5 days preceding the date set for the hearing before this honorable court and only 2 days preceding the preparation of this amended application. The extreme complexity of the many issues involved dictate the necessity for further analysis by applicant's technical staff and for further information that should be supplied by El Paso. While El Paso's outline on page 1 indicates prior discussions with applicant, such limited conferences as have been available have failed to disclose suitable information to resolve any of the foregoing matters of concern.

VIII

The decision of the United States Supreme Court in the case of *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, indicates in a general way the objectives that should be accomplished by any decree effectuating divestiture. The sole question as stated by the Supreme Court in the antitrust proceeding was whether the acquisition

had a sufficient tendency to lessen competition. That question remains of paramount importance in divestiture. Here, as in the antitrust action, we must deal with probabilities and are not limited to dealing with certainties. As noted by the Supreme Court, Pacific Northwest was prospering and appeared strong enough to warrant a treaty with El Paso that protected El Paso's California markets. In the divestiture there must be assurance that the consequences of this illegal treaty are not perpetuated by the manner of divestiture. As pointed out in the Supreme Court opinion, Pacific Northwest had proximity to [fol. 149] the California markets and had "enormous reserves in the San Juan Basin." The court noted "Had Pacific Northwest remained independent, there would have been no doubt it would have sought to exploit its formidable geographical position, vis-a-vis, California." The order (November 30, 1959) of the Federal Power Commission examiner in the merger proceedings (Docket G-13018 and G-13019) provides further evidence of the fact that Pacific was, and would have continued to be, a competitor for gas in the San Juan Basin area. As stated on page 31 of said order:

> "So far as El Paso and Pacific, as separate companies, are concerned, Pacific will be eliminated by the merger as a competitor for available gas reserves in producing fields economically accessible to both it and El Paso. Pacific would definitely be a competitor in the San Juan Basin. . . ."

Thus it is imperative that new company be restored a proper share of the San Juan Basin reserves acquired by El Paso subsequent to merger when El Paso was freed of the competition for the same by the illegal acquisition of and merger with Pacific. Unless this be accomplished new company will have visited upon it a penalty by El Paso which would serve to perpetuate the consequences of the antitrust violation upon which the Supreme Court decision was rested.

IX

The matters hereinbefore mentioned as being raised by El Paso's sketchy proposal for divestiture, in all particulars, fall within this court's jurisdiction under its primary responsibility of framing an appropriate divestiture decree. As pointed out in the statement of the Federal Power Commission, which it seeks leave to file, any jurisdiction of the FPC would arise under Section 7 of the Natural Gas Act and would bring into play only matters [fol. 150] related to minimum requirements for service to *present markets* for which certification is sought. The jurisdiction of the court in the divestiture proceeding, on the other hand, provides the forum in which to have resolved all matters related to the reconstitution of a company that must be completely independent and must be freed of the consequences of the intervening illegal acquisition by El Paso. It is only by invoking the jurisdiction of this honorable court that the new company can be assured of being placed in the position whereby Pacific Northwest's previous status as a company having the ability to be an aggressive competitor of El Paso for *new markets* will be accomplished.

X

The granting of this amended petition will in no way broaden the issues before this court, nor will it unduly delay the proceedings, or prejudice the adjudication of the rights of the original parties, or be in conflict with the policy and purposes of the statute under which the action was commenced.

XI

Except as set forth in paragraph VII hereof, no separate pleading setting forth a claim or defense is submitted herewith for the reason that all issues raised by the pleadings herein have been resolved and the remaining issues are directly to the equity jurisdiction of this court with

regard to the method of divestiture, the corporate reorganization of El Paso Natural Gas Company, the formulation of a new corporate entity to succeed to the interest of El Paso in service to the Northwest area or the reconstituting of Pacific Northwest Pipeline Corporation, and the identification of assets subject to divestiture and their disposition. Subsequent to the decision of the Supreme [fol. 151] Court of the United States herein, no pleadings as such have been filed by the principal parties hereto, save only the possibility El Paso's sketchy outline of a divestiture proposal may have been filed.

Wherefore, Applicant prays for an order of this Court permitting it to intervene in the above-entitled cause and to participate therein as a party in intervention in such cause.

Dated This 16th day of October, 1964.

John J. O'Connell, Attorney General; Robert E. Simpson, Assistant Attorney General; Frank P. Hayes, Assistant Attorney General; Attorneys for Applicant Washington Utilities and Transportation Commission.

Office and Post Address: Temple of Justice, Olympia, Washington.

[fol. 152] Certificate of Service (omitted in printing).

[fol. 154]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants.

ORDER CONTINUING HEARINGS ON PROPOSAL FOR DIVESTITURE AND PETITIONS TO INTERVENE—Filed October 21, 1964

It Is Ordered that the Proposal for Divestiture and the Petitions and Applications to Intervene heretofore filed herein are continued for hearing to December 2, 1964, at 10:00 a.m. in the Courtroom of this Court.

It Is Further Ordered that each petitioner and applicant for intervention shall have to and including November 19, 1964, to serve upon the parties and file with the Court its memorandum of evidence, law and argument respecting intervention.

Dated: October 21, 1964.

Willis W. Ritter, Chief Judge.

[File endorsement omitted]

[fol. 155]

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

SALT LAKE CITY, UTAH

October 22, 1964

Notice (Rule 77(d)) Mailed to Counsel of Record of Continued Hearings

To:

William T. Thurman, Esq., U. S. Attorney, 200 Post Office & Courthouse Bldg., Salt Lake City, Utah

Jack Louis Lipson, Esq., Dept. of Justice, Washington, D. C.

Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, Salt Lake City, Utah

Gregory A. Harrison, Esq., Brobeck, Phlegar & Harrison, 111 Sutter Street, San Francisco, California

Ray, Quinney and Nebeker, Suite 300, 65 South Main, Salt Lake City, Utah

Arthur H. Dean, Esq., Sullivan & Cromwell, 48 Wall Street, New York, New York

Leon M. Payne, Esq., 2200 Gulf Bldg., Houston 2, Texas

Richard W. Sabin, Esq., State of Oregon, Public Utility Comm., Salem, Oregon

Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., Salt Lake City, Utah

James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington

Keith Sohm, Esq., 301 State Capitol Bldg., Salt Lake City, Utah

Larry D. Ripley, Esq., Asst. Attorney General, State of Idaho, Boise, Idaho

Cartano, Botzer & Chapman, 1415 Joseph Vance Bldg., Seattle, Wash.

Draper, Sandack and Saperstein, 606 El Paso Natural Gas Bldg., Salt Lake City

Brigham E. Roberts, Esq., 530 Judge Bldg., Salt Lake City, Utah

C. Keefe Hurley, Esq., 60 State Street, Boston 9, Massachusetts
Joseph S. Jones, Esq., Walker Bank Bldg., Salt Lake City, Utah
Paul B. Cannon, Esq., Continental Bank Bldg., Salt Lake City, Utah
Virgil H. Wedge, Esq., First Natl. Bank of Nevada, 1 East 1st St., Reno, Nevada
Larry Pankonien, Esq., Box 2511, Houston, Texas
Robert L. Simpson, Esq., Paine, Lowe, Coffin, Herman & O'Kelly, 602 Spokane and Eastern Bldg., Spokane, Washington
William M. Bennett, Esq., Public Utilities Comm., State of California, San Francisco, California
Harold W. Pierce, Esq., 735 S. W. Morrison Street, Portland, Oregon
Rex J. Hanson, Esq., Kearns Bldg., Salt Lake City, Utah
Richard A. Solomon, General Counsel; Howard E. Wahrenbrock, Solicitor; Joel Yohalem, Attorney, Federal Power Commission, Washington, D. C.
Richard B. Hooper, Esq., Norton Building, Seattle 4, Washington

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Re: C 143-57

UNITED STATES OF AMERICA

—vs.—

EL PASO NATURAL GAS COMPANY and
PACIFIC NORTHWEST PIPELINE CORP.

Take Notice, in accordance with Rule 77(d) of the Federal Rules of Civil Procedure, you are hereby notified that:

Order Continuing Hearings on Proposal for Divestiture and Petitions to Intervene heretofore filed, are continued for hearing to December 2, 1964, at 10:00 a.m. in the Courtroom of this Court.

Further Ordered that each petitioner and applicant for intervention shall have to and including November 19, 1964, to serve upon the parties and file with the Court its memorandum of evidence, law and argument respecting intervention (copy attached)

was signed by Honorable Willis W. Ritter on the 21st day of October, 1964, and entered in the Docket as of the 21st day of October, 1964.

Andrew John Brennan, Clerk, By: Deana H. Scott, Deputy Clerk.

[fol. 156]

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

SALT LAKE CITY, UTAH

October 22, 1964

To:

William T. Thurman, Esq., U. S. Attorney, 200 Post Office & Courthouse Bldg., Salt Lake City, Utah

Jack Louis Lipson, Esq., Dept. of Justice, Washington, D. C.

Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, Salt Lake City, Utah

Arthur H. Dean, Esq., Sullivan & Cromwell, 48 Wall Street, New York, New York

Gregory A. Harrison, Esq., Brobeck, Phlegar & Harrison, 111 Sutter Street, San Francisco, California

Ray, Quinney and Nebeker, Suite 300, 65 South Main, Salt Lake City, Utah

Leon M. Payne, Esq., 2200 Gulf Bldg., Houston 2, Texas

Richard W. Sabin, Esq., State of Oregon, Public Utility Comm., Salem, Oregon

Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., Salt Lake City, Utah

James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington

Keith Sohm, Esq., 301 State Capitol Bldg., Salt Lake City, Utah

Larry D. Ripley, Esq., Asst. Attorney General, State of Idaho, Boise, Idaho

Cartano, Botzer & Chapman, 1415 Joseph Vance Bldg., Seattle, Washington

Draper, Sandack and Saperstein, 606 El Paso Natural Gas Bldg., Salt Lake City

Brigham E. Roberts, Esq., 530 Judge Bldg., Salt Lake City, Utah

C. Keefe Hurley, Esq., 60 State Street, Boston 9, Massachusetts

Joseph S. Jones, Esq., Walker Bank Bldg., Salt Lake City, Utah

Paul B. Cannon, Esq., Continental Bank Bldg., Salt Lake City, Utah

Virgil H. Wedge, Esq., First Natl. Bank of Nevada, 1 East 1st St., Reno, Nevada

Larry Pankonien, Esq., Box 2511, Houston, Texas

Robert L. Simpson, Esq., Paine, Lowe, Coffin, Herman & O'Kelly, 602 Spokane and Eastern Bldg., Spokane, Washington

William M. Bennett, Esq., Public Utilities Comm., State of California, San Francisco, California

Harold W. Pierce, Esq., 735 S. W. Morrison Street, Portland, Oregon

Rex J. Hanson, Esq., Kearns Bldg., Salt Lake City, Utah

Richard A. Solomon, General Counsel; Howard E. Wahrenbrock, Solicitor; Joel Yohalem, Attorney, Federal Power Commission, Washington, D. C.

Richard B. Hooper, Esq., Norton Building, Seattle 4, Washington

Mailed 11/3/64—Gustin, Richards, Mattsson—Walker Bank

Re: C 143-57

UNITED STATES OF AMERICA

—vs.—

EL PASO NATURAL GAS COMPANY and
PACIFIC NORTHWEST PIPELINE CORP.

Take Notice that the above-entitled case has been set for hearing at Salt Lake City, Utah, on Wednesday, December 2, 1964, at 10:00 A.M., before Honorable Willis W. Ritter, on Hearings on Proposal for Divestiture and Petitions to Intervene.

Andrew John Brennan, Clerk, By: Deana H. Scott, Deputy Clerk.

[fol. 157]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY, and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants.

MOTION OF UTAH GAS SERVICE COMPANY TO INTERVENE—Filed November 2, 1964

Utah Gas Service Company, a Utah corporation, moves the court for an order pursuant to Rule 24 of the Federal

[File endorsement omitted]

Rules of Civil Procedure permitting it to intervene in the proceedings before the court in the above entitled action relating to divestiture by El Paso Natural Gas Company of properties and assets acquired by merger of that company with Pacific Northwest Pipeline Corporation.

This motion is submitted on the grounds and for the reasons hereinafter stated and is not accompanied by a pleading setting forth a claim or defense because all issues which are the subject of such pleadings have been heretofore finally determined and the remaining matters to be decided are concerned solely with how and to whom divestiture will be made.

I.

Utah Gas Service Company is a public utility corporation organized in Utah and qualified to do business in Utah. It is engaged in the distribution of natural gas and is subject to the jurisdiction of the Public Service Commission of Utah.

[fol. 158] II.

On August 12, 1956, Utah Gas Service Company installed, connected and made the first delivery of natural gas to the first retail customer to use natural gas from the pipeline system of Pacific Northwest Pipeline Corporation. Prior to the above date certain "Service Agreements" had been executed between Utah Gas Service Company and Pacific Northwest Pipeline Corporation. These Service Agreements were approved by the Federal Power Commission. These Agreements provided for the gas requirements on a firm service basis for this company's customers in its certificated area as previously approved by the Utah Public Service Commission. These Agreements for a period of twenty years became effective with the start of natural gas service in the various cities served by this company, namely Moab, Vernal and Monticello, Utah, and the counties of San Juan, Grand and Uintah. Service Agreements were also executed by said parties providing for the delivery of Industrial Interruptible Gas for use by uranium processing

plants, a power generating plant and other industrial users. These Service Agreements for both firm service gas for residential and commercial resale purposes and for Industrial Interruptible Gas called for wholesale gas rates for these deliveries in accordance with the then filed Tariff of Pacific Northwest Pipeline Corporation. Starting with one customer deliveries of gas were gradually increased year by year prior to the merger on December 6, 1958. After the merger these Service Agreements were assumed by El Paso Natural Gas Company and placed under the El Paso Natural Gas Company filed Tariff for the Northwest Division. As of now approximately 3,000 customers are being served by Utah Gas Service Company with total deliveries for the year 1963 being 937,610,000 cubic feet. Since the merger yearly increases for gas requirements have been made with El Paso Natural Gas Company. The entire gas [fol. 159] supply on a wholesale basis for Utah Gas Service Company is obtained from El Paso Natural Gas Company.

III.

All of the obligations of Pacific Northwest Pipeline Corporation under the agreements described in the foregoing paragraph were assumed and performed by the El Paso Natural Gas Company following consummation of the merger of that company with Pacific Northwest Pipeline Corporation and all of said agreements require use of facilities and properties which are subject to divestiture by El Paso Natural Gas Company and which will, therefore, become the facilities and properties of others.

IV.

Utah Gas Service Company and its utility customers are virtually concerned in the continued satisfactory performance of the above agreements and in the maintenance of efficient management and moderate rates by the reconstituted entity which will assume ownership, management and control of the divested properties.

Utah Gas Service Company should be permitted to intervene because there is no other party to the above entitled proceedings that can adequately protect its interests in the matter, and it will be bound by such divestiture as may be accomplished with the approval of the court. Utah Gas Service Company is in such a position by virtue of its described contracts and relationships with El Paso Natural Gas Company as to suffer possible adverse effects by reason of distribution or disposition of the properties which are now subject to the divestiture which this court will supervise.

Dated this 29th day of October, 1964.

Respectfully submitted,

Gustin, Richards & Mattsson, By Edward F. Richards, Attorneys for Utah Gas Service Company, 1007 Walker Bank Building, Salt Lake City, Utah.

Address of Utah Gas Service Company, 511 Deseret Building, Salt Lake City, Utah.

[fol. 160] Certificate of Service (omitted in printing).

[fol. 162]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants.

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE—Filed November 17, 1964

Utah Gas Service Company respectfully submits the following in support of its motion to intervene in the above entitled cause.

I.

History and Service

Utah Gas Service Company was incorporated in the State of Utah on the 5th day of August, 1955. Thereafter it obtained franchises as a public utility to serve natural gas to the inhabitants of the following counties: Daggett, Grand, San Juan and Uintah in the State of Utah. It also obtained a franchise to serve the following towns and cities in the following counties: Moab in Grand County, Monticello in San Juan County, Maeser and Vernal in Uintah County. The company now and has for a good many years held Certificates of Convenience and Necessity from the Public Service Commission of the State of Utah to serve the counties and towns above named.

The company serves residential and commercial users of natural gas on a firm basis in its certificated areas and also serves industrial users on an interruptible basis. At the present time it is serving approximately 3,000 cus-
[fol. 163] tomers, the total deliveries for the year 1963 being 937,610,000 cubic feet.

Its industrial interruptible customers include San Francisco Chemical Company in Uintah County, Atlas Corporation and Texas Gulf Sulphur Company, Grand County, Utah. At the present time it is also serving Arches National Monument in Grand County and is selling gas to the United States of America for resale to residents of Dutch John at Fleming Gorge Dam, Daggett County, Utah.

II.

Reasons Why Utah Gas Service Company Should Be Entitled to Intervene

1. It purchases its entire supply of natural gas which it distributes from the El Paso Natural Gas Company and will, of necessity, be required to purchase all of its supply from the new company that acquires all of the property from El Paso Natural Gas Company.

2. It is interested in the personnel that will be in charge and control of the new corporation so that it can be assured that it has a corporation which will be managed by individuals entirely independent of the control of El Paso Natural Gas Company. The individuals that will take charge of the new company should have the ability to be an aggressive competitor of El Paso Natural Gas Company for new markets and to hold down the expenses of gathering charges and costs of gas, whether by exchange agreements or otherwise, in order to make available to petitioner the gas at the lowest possible price.

3. The personnel operating the new company must be independent of El Paso Natural Gas Company so that it may compete against El Paso Natural Gas Company in the field

of discovery and the purchase of any new gas supplies and reserves.

Petitioner will be affected by the order of this court as it must compete against other fuels in the State of Utah and must have the lowest possible rate for the purchase of [fol. 164] gas in order to render to the public an efficient, economical service.

III.

Authorities in Support of Right to Intervene

The right of intervention is covered by *Rule 24* of the *Federal Rules of Civil Procedure,* 28 U.S.C.A.

> "(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an
> 1946, effective March 19, 1948."

Cases interpreting this rule relied upon by petitioner are: *Kozak* vs. *Wells,* Eighth Circuit (April 26, 1960), 278 Federal Reporter 2d 104. This action involved the question of a townsite and intervenor Kozak was the owner of certain lots therein. This case is quoted with approval in the case of *Stadin* vs. *Union Electrical Company,* Eighth Circuit (November 15, 1962), 309 Federal 2d 912. In this case intervenor was a stockholder in the Union Electrical Company which had sued Westinghouse Electric Corporation and other electrical suppliers. In quoting from *Kozak* vs. *Wells,* the following is stated:

"We had occasion in Kozak v. Wells, supra, to consider the significance of the language in Rule 24 (a) (2). We there concluded, pp. 110-111 of 278 F.2d, that we preferred to give the word 'bound' a utilitarian and realistic interpretation and not a narrow one, that the words 'may be' in the Rule indicate the judgment need not always operate as res judicata, that the Rule generally was to be given a liberal interpretation, and that 'perhaps each case is to be decided and explained largely [fol. 165] on its own facts'. Cf. International Mortgage & Investment Corp. v. Von Clemm, 2 Cir., 1962, 301 F. 2d 857, 861-862."

Pure Oil Company vs. *Ross*, Seventh Circuit (November 17, 1948), 170 Federal 2d 651. This case sets down the principle of right of intervention in the following language:

"(4) Rule 24 (a) (3), Federal Rules of Civil Procedure, 28 U.S.C.A., permits anyone upon timely application to intervene in an action as a matter of right when the applicant is so situated as to be adversely affected by a distribution of property in the custody of the court or of an officer thereof, and the law is well settled, that to authorize an intervention, the intervenor must have an interest in the subject matter of the litigation of such a nature, that he will gain or lose by the direct legal operation of the judgment. United States Casualty Co. v. Taylor, 4 Cir. 64 F. 2d 521; Smith v. Gale, 144 U.S. 509, 518, 12 S.Ct. 674, 36 L.Ed. 521; Leary v. United States, 224 U.S. 567, 32 S.Ct. 599, 56 L.Ed. 889 Ann. Cas. 1913D, 1028; and United States v. California Cooperative Canneries, 279 U.S. 553, 49 S.Ct. 423, 73 L.Ed. 838."

Petitioner's position is distinguishable from that of the petitioner in the case of *Sutphen Estates* vs. *United States*, 342 U.S. 19, 96 L.Ed. 19, 72 S.Ct. 14 in the United States case the petitioner failed to make any showing that the new

theater company lacked financial strength to assume the responsibilities of the guaranty.

In the instant case, petitioner is concerned with the control and management of the new company, which will of course not be determined until the court enters its decree and for petitioner to protect its rights it must be in a position in the hearing to give its views in regard to such management and control.

Dated this 16 day of November, 1964.

Respectfully submitted,

By Edward F. Richards, Attorney for Utah Gas Service Co., 1007 Walker Bank Building, Salt Lake City, Utah.

[fol. 166] Certificate of Service (omitted in printing).

[fol. 168]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants.

AMENDMENT OF APPLICATION FOR LEAVE TO INTERVENE—
Filed November 17, 1964

Comes now Paradox Production Corporation, a corporation duly organized and existing under the laws of the

[File endorsement omitted]

State of Nevada with its principal office at 404 Executive Building, Salt Lake City, Utah, and amends its Application for Leave to Intervene, filed herein on October 14, 1964, by adding thereto an alternative Application for Leave to Appear as Amicus Curiae, so that the application of Paradox Production Company is now for Leave to Intervene or, in the alternative, for Leave to Appear as Amicus Curiae for the purpose of submitting its Proposal for Divestiture pursuant to the Mandate of the Supreme Court of the United States and in support of its said application asserts:

The Supreme Court of the United States has struck down the El Paso Natural Gas Company-Pacific Northwest Pipeline Corporation merger in order to arrest the trend toward concentration and the tendency to monopoly in the natural gas industry before the consumers' alternatives disappear. Paradox Production Corporation seeks to appear as an intervenor or as amicus curiae for the purpose of submitting its Proposal for Divestiture pursuant to the Mandate of the Supreme Court of the United States, thereby assisting and aiding the Court in bringing about a divestiture [fol. 169] which will satisfy said Mandate and serve the public interest by insuring competition for the new increments of demand that will emerge with an expanding population and with an expanding industrial and household use of gas in the Mountain States, the West and the Northwest. It is the aim of Paradox Production Corporation to restore to the present and future consumers of gas in these rapidly growing sections of the country the economic benefits which flow from free, open and vigorous competition.

Paradox Production Corporation recognizes that there should emerge from this proceeding a company which will provide the aforementioned consumers with insurance against the sterile oppression of monopoly and which will underscore the interests of the public in a public utility. This can be accomplished only by a bona fide sale in an arm's length transaction to a free and independent company, the future operations of which will not require per-

petual supervision by this Court and the Department of Justice. Paradox Production Corporation submits itself as such a company and respectfully requests permission to assist this Court in accomplishing the divestiture required by the Mandate of the Supreme Court of the United States.

Respectfully submitted,

Brigham E. Roberts, Rawlings, Wallace, Roberts & Black, Suite 530, Judge Building, Salt Lake City Utah;

C. Keefe Hurley, Earle C. Cooley, Hale and Dorr, 60 State Street, Boston, Massachusetts,
Counsel for Paradox Production Corporation.

Dated: Nov. 16, 1964.

[fol. 170] Certificate of Service (omitted in printing).

[fol. 172]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

SOUTHERN CALIFORNIA GAS COMPANY and SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, Applicants for Intervention.

MOTION TO INTERVENE—Filed November 17, 1964

Southern California Gas Company and Southern Counties Gas Company of California, hereinafter referred to as Southern Companies, respectfully apply for leave to intervene in the above-entitled proceeding pursuant to Rule 24 of the Federal Rules of Civil Procedure.

This application is made on the grounds and for the reasons hereafter stated and is accompanied by a Memorandum of Points and Authorities, which is incorporated by reference herein, setting forth the nature of the evidence which the Southern Companies intend to produce to show the interest in this proceeding which entitles them to intervene. This application is further based on all papers, pleadings and all other documents filed by the parties herein and the other parties seeking to intervene.

I.

The Southern Companies are public utility corporations organized and existing under the laws of the State of Cali-

[File endorsement omitted]

fornia. They purchase, distribute and sell natural gas to the public in the central and southern portions of the State [fol. 173] of California. Both companies together serve a population in excess of nine million people and purchase at the California-Arizona boundary more than one billion, two hundred million cubic feet per day of their total natural gas supply from defendant El Paso Natural Gas Company, hereinafter referred to as El Paso. The Southern Companies together constitute the largest single purchaser of natural gas from El Paso.

II.

The divestiture plan as proposed by El Paso in this proceeding appears to be fair and equitable and appears to fully protect all those interests, including those of the Southern Companies, which might be affected by the proposed divestiture decree. Other parties, however, have sought to intervene in these proceedings and change the form of the proposed divestiture plan. Any change in this plan might be injurious to the balancing of interests involved here. In particular, since Southern Companies are the largest single purchaser of natural gas from El Paso, and since Southern Companies rely on El Paso for a large percentage of their out-of-state gas supplies, any divestiture decree which adversely affects the natural gas reserve situation of El Paso, the geographical location of these reserves, El Paso's cost of service, or El Paso's ability to do business generally may have a direct economic impact on the Southern Companies.

III.

Southern Companies are, therefore, so situated as to be affected directly by the divestiture decree in this proceeding. Southern Companies' interests are not represented by the existing parties. Southern Companies will be bound by any decree or judgment of divestiture. The intervention of

Southern Companies will not unduly delay or prejudice the adjudication of the rights of the original parties.

[fol. 174] Wherefore, applicants Southern California Gas Company and Southern Counties Gas Company of California respectfully petition for an Order of this Court permitting them to intervene in the above-entitled cause and to participate therein as parties in intervention.

Dated this 16th day of November, 1964.

Respectfully submitted,

John Ormasa, Roger J. Nichols, Attorneys for Southern California Gas Company, Box 3249, Terminal Annex, Los Angeles, California 90054.

Milford Springer, Robert M. Olson, Jr., Attorneys for Southern Counties Gas Company of California, Box 2736, Terminal Annex, Los Angeles, California 90054, By Roger J. Nichols.

Memorandum of Points and Authorities in Support of Motion to Intervene

I.

Introduction

Southern California Gas Company and Southern Counties Gas Company of California (Southern Companies) have not previously attempted to intervene in this case since they have assumed that any decree ordered by this Court would be made conditional on the obtaining of appropriate Federal Power Commission authorizations. However, after hearing the contentions of the proposed intervenors from the Pacific Northwest area, it became clear that if these parties were allowed to intervene and their contentions adopted in full or in part by this Court, Southern Companies' interests might be seriously affected.

[fol. 175]

II.

Nature of Evidence

Should the Court deem it appropriate and necessary, Southern Companies are prepared to present evidence which will demonstrate their interest in this proceeding. In general this evidence relates to the close contractual relationship which exists between Southern Companies as a gas purchaser and El Paso as a gas supplier.

Southern Companies distribute natural gas in the southern and central portions of California, an area populated by more than nine million people. Over 70 percent of the gas distributed is obtained from outside California. A very large percentage of this out-of-state supply is purchased by Southern Companies from El Paso. In 1963, for example, Southern Companies purchased 78 percent of their out-of-state supply from El Paso. In turn, this amount constituted 35 percent of El Paso's total sales, including sales made by El Paso's Northwest Division (the area served by the former Pacific Northwest Pipeline Company). The relationship between the two companies as a seller and purchaser is such that any divestiture decree which adversely affects El Paso may result in a direct adverse effect on Southern Companies and their consumers. As an example, since substantial amounts of San Juan Basin gas move west to the California market and the Southern Companies, any change in the allocation of San Juan Basin reserves from that proposed here by El Paso would have a direct impact on Southern Companies. Changes in other aspects of the plan may have a similar direct effect.

With respect to the question of reserves allocation, Southern Companies note that El Paso's proposal provides for a disposition of its gas reserves matched to the market requirements of the two surviving companies. Each com-
[fol. 176] pany would be backed by an initial reserve life index of approximately 27 years, a period well in excess of the Federal Power Commission standard. Furthermore,

the basic contractual arrangements which would exist between the two surviving companies after divestiture would enable each of the two companies to continue its service to the public *without any economic disruption.*

III.

Statement of Position on Intervention

Southern Companies recognize that this is a new and different proceeding without precedent. Before this Court is a pipeline company which renders a public service under the Natural Gas Act and, thus, is impressed with a substantial public interest. This single pipeline company must now be broken into two separate unrelated companies. Both new companies must be sufficiently strong and viable to continue the public service formerly rendered by the single company. The single company had agreements to purchase, transport and sell natural gas with numerous parties. Each of these contracts, again, was sufficiently impressed with a public interest so as to require, for the most part, approval by the Federal Power Commission under the Natural Gas Act.

The task of this Court, therefore, in ordering divestiture is charged with many considerations involving the public interest which are not present in the usual antitrust case.

Primary jurisdiction to determine where the public interest lies as far as gas purchase, gas transportation and gas sales in interstate commerce rests initially with the Federal Power Commission (Natural Gas Act, 15 U.S.C., Section 717, et seq.). Therefore, before any company created by divestiture can legally engage in the interstate transportation, sale or purchase of natural gas, it would [fol. 177] be required to initiate a proceeding for certification before the Federal Power Commission under Section 7 of the Natural Gas Act (15 U.S.C., Section 717(f)). At that time, the arrangements by which the newly divested company will do business can be thoroughly explored by those desiring to do so in a forum equipped with special

expertise to handle these matters. Any divestiture decree ordered by this Court should, therefore, be made conditional on obtaining appropriate Natural Gas Act Section 7 certification by the divested company before the decree becomes final. Such a condition will allow those with an appropriate interest to participate fully in the certificate proceeding to protect whatever interest they feel is affected. If there is a decree with such a condition, it is the position of the Southern Companies that intervention by *any* new party is unnecessary *in this proceeding*. If, however, the Court determines that it need not so condition its decree, or others are allowed to intervene, Southern Companies are clearly entitled to intervene to protect their interests as well.

The right to intervene in such an instance stems from the language of Rule 24 of the Federal Rules of Civil Procedure. Intervention is allowed of right "when the representation of applicant's interest by the existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action" (Rule 24(a)(2)), or "when the applicant is so situated as to be adversely affected by distribution or other disposition of property which is in the custody or subject to the control or disposition of the Court or an officer thereof" (Rule 24(a)(3)).

That none of the existing parties to this proceeding represents the interests of the Southern Companies is clear. Furthermore, in a very real sense Southern Companies will be bound by any decree not made conditional upon [fol. 178] certificate authorization. The example of an adverse division of reserves in the San Juan Basin has already been mentioned. It is further obvious that the Southern Companies would be adversely affected by any impairment of El Paso's ability to render public service and remain competitive. Thus, intervention is the only remedy for the Southern Companies if this Court decides to explore questions usually presented to the Federal Power Commission under the Natural Gas Act as well as questions concerning the competitive or the antitrust aspects of the divestiture.

Therefore, if intervention is allowed to other proposed intervenors, or the Court deems it appropriate not to make its decree conditional on Federal Power Commission certificate approval, Southern Companies respectfully request that they be allowed to intervene.

Respectfully submitted,

John Ormasa, Roger J. Nichols, Attorneys for Southern California Gas Company, Box 3249, Terminal Annex, Los Angeles, California 90054.

Milford Springer, Robert M. Olson, Jr., Attorneys for Southern Counties Gas Company of California, Box 2736, Terminal Annex, Los Angeles, California 90054.

[fol. 179] Certificate of Service (omitted in printing).

[fol. 181]

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

CENTRAL DIVISION

Civil Action No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

v.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants.

MOTION OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA FOR LEAVE TO INTERVENE—Filed November 17, 1964

To the Honorable Judge of the above-entitled Court:

The Public Utilities Commission of the State of California (California PUC) moves the Court for leave to intervene in the above-entitled proceeding and in support of its motion states:

1. The California PUC is an administrative agency created by the Constitution of the State of California and under the terms of said Constitution is empowered to supervise and and regulate natural gas distributing utilities within the State of California. It exercises general regulatory supervision over the rates and charges of said utilities. (California Constitution, Article XII, sec. 22.)

[fol. 182] 2. California natural gas distributing utilities purchase approximately seventy-five per cent of their total supply of natural gas from El Paso Natural Gas Company (El Paso), defendant herein. Under a cost-of-service form

[File endorsement omitted]

of regulation the cost to the utilities of gas purchased from El Paso is passed on to ultimate ratepayers within the State of California. Likewise costs of El Paso flow through to these ultimate ratepayers.

3. This proceeding, in its present posture, involves the divestiture by El Paso of the assets of its Pacific Northwest Division which were acquired by the merger of El Paso and Pacific Northwest Pipeline Corporation. The merger was set aside and divestiture was ordered by the United States Supreme Court in *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651 (1964).

4. The California PUC is concerned in that a fair, just and equitable method of divestiture must take into consideration the impact on those customers who will continue to be served by El Paso. These customers include California natural gas distributing utilities and ultimate ratepayers who purchase gas from these utilities.

5. The California PUC is directly concerned about the separation of physical properties and the segregation of gas reserves in the San Juan Basin of New Mexico and Colorado. The San Juan Basin is a major supply area for the California market, and such separation and segregation must be accomplished by a method of divestiture which protects California interests in this area.

[fol. 183] 6. El Paso's cost of service, upon which its rates to California utilities are based, includes the costs of the Opal Gasoline Absorption Plant in the Big Piney Field, Wyoming. Those costs must be properly recognized in the plan of divestiture.

7. The Sumas and Kingsgate exchange agreements and the San Juan Basin gathering agreement directly affect the cost of gas to the California market. These agreements by El Paso, together with the Colorado Interstate Gas Company service agreement, must be considered in the method of divestiture.

8. The California PUC is further interested in assuring that the new company to be formed as the result of the divestiture be independent of El Paso in order that competition be provided in the California market.

9. The California PUC has a general interest in all matters relative to the divestiture. The California PUC has intervened in numerous proceedings before the Federal Power Commission involving El Paso, and the method of divestiture will directly affect its interests in such matters.

10. The interests of the California PUC in this judicial proceeding rest on the directions of the Supreme Court to this Court "to order divestiture without delay." The regulatory aspects of the divestiture properly reside with the Federal Power Commission, and California will appear before that agency at the appropriate time.

[fol. 184] Wherefore, the Public Utilities Commission of the State of California prays that the Court enter an order herein permitting it to intervene in this proceeding.

Dated: November 16, 1964.

Richard E. Tuttle, Attorney and Chief Counsel for the Public Utilities Commission of the State of California.

Certificate of Service (omitted in printing).

[fol. 187] Please Take Notice that the above motion will be heard before this Court in Courtroom 249, Post Office and Court House Building, Salt Lake City, State of Utah, on December 2, 1964, at ten o'clock in the forenoon of that day.

Richard E. Tuttle, Attorney and Chief Counsel for the Public Utilities Commission of the State of California, 5072 State Building, San Francisco, Calif. 94102.

[fol. 188]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

—vs—

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

PUBLIC SERVICE COMMISSION OF WYOMING, Intervenor.

APPLICATION FOR LEAVE TO INTERVENE—
Filed November 18, 1964

Comes Now the Public Service Commission of Wyoming, a legally constituted agency of the State of Wyoming, and respectfully applies for leave to intervene in the above-entitled proceeding pursuant to Rule 24 of the Federal Rules of Civil Procedure. This application is submitted as parens patriae on the following grounds:

I

Applicant, under the laws of the State of Wyoming, and more specifically under the provisions of Chapters 1, 2 and 3, Title 37, Wyoming Statutes, 1957, as amended, is vested with power and jurisdiction to supervise and regulate every public utility in the State of Wyoming, including natural gas companies, and to do all things which are necessary or convenient in the exercise of such power and jurisdiction. It is also the duty of applicant, under the provi-

[File endorsement omitted]

sions of Chapter 3 of Title 37, Wyoming Statutes, 1957, as amended, to determine just and reasonable rates and practices to be observed by public utilities, including natural gas companies supplying natural gas to the public for compensation.

[fol. 189] II

Natural gas is distributed within the State of Wyoming and the distribution thereof is subject to regulation by applicant, under the provisions of Title 37, Wyoming Statutes, 1957, as amended.

(a) El Paso Natural Gas Company sells gas at wholesale to the Wyoming Industrial Gas Company at Kemmerer, Wyoming, for resale to consumers within the Kemmerer, Wyoming area. The Wyoming Industrial Gas Company, a Wyoming corporation, is a distributor of natural gas subject to the jurisdiction of the Public Service Commission; that in the year 1963 the total sales dollarwise to Wyoming Industrial Gas Company by El Paso amounted to $128,924.21 and this covered the sale of 358,373 mcf of gas.

(b) The El Paso Natural Gas Company also sells natural gas to the San Francisco Chemical Company at its plant near Sage, Wyoming, for industrial use.

(c) El Paso also supplies gas to the Mountain Fuel Supply Company on an exchange basis as follows: Mountain Fuel Supply Company has gas production at LaBarge, Wyoming, which it places in El Paso's lateral line for transportation to El Paso's main east and west line near Opal, Wyoming; that El Paso delivers to Mountain Fuel Supply a like quantity of gas at various points of interconnection of transmission in Sublette and Lincoln Counties in Wyoming; that during the year 1963 11,073,601 mcf of gas was thus exchanged between El Paso and Mountain Fuel Supply Company and that El Paso was paid $448,051.80 for exchange services; that Mountain Fuel Supply Company is subject to regulation by the Public Service Commission; that additionally, El Paso Natural Gas Com-

pany purchases a substantial amount of gas produced from gas areas within the State of Wyoming. It is expected that both El Paso Natural Gas Company and the new company which must be formed for the purpose of operating the [fol. 190] facilities to be divested by El Paso Natural Gas Company will be called upon to satisfy continuing increases in the requirements of those markets each will serve. As those markets increase, such companies will be required to seek additional sources of gas supply, and those sources will be the potential natural gas reserves underlying the vast sedimentary basins of the Rocky Mountain area, including those reserves located within the State of Wyoming. The market pressure thereby inducing such exploratory activity will serve to develop the natural resources available within the State of Wyoming to the benefit of the entire public within this State. Furthermore, the development of such natural gas reserves within the State of Wyoming will provide an opportunity for Mountain Fuel Supply Company to participate in the utilization of such added production within the State for the benefit of its consumers. It is of vital importance to natural gas distributors and consumers, as well as all members of the general public within the State of Wyoming that the companies resulting from consummation of a plan of divestiture be able to meet future natural gas requirements within the State of Wyoming in an efficient and adequate manner.

III

On April 6, 1964, the United States Supreme Court directed that the defendant El Paso Natural Gas Company be ordered to divest itself of certain of its properties. On October 19, 1964, such defendant presented to this Court a plan for such divestiture. Applicant has reviewed such plan of divestiture and is satisfied that the plan, in its broad aspects, is equitable and will result in a situation under which El Paso Natural Gas Company and the new company will each be strong and capable of satisfying the

requirements of their respective market areas. Applicant considers that such plan if approved by this Court, together [fol. 191] with such modifications therein as may be appropriate to satisfy the requirements of the United States Department of Justice, will accommodate public interest requirements properly at issue before this Court. However, it is apparent from the proceedings of October 19, 1964, that other petitioners for intervention, if permitted to intervene, will propose major modifications to said plan of divestiture which could adversely affect the interests of the people of Wyoming.

IV

Any order entered by this Court with respect to said divestiture will be binding upon the distributors, consumers and the general public of the State of Wyoming. Any such order, if reflecting modifications in the plan as heretofore urged by other applicants for intervention, may seriously prejudice the people of Wyoming and applicant with respect to its duty to protect the users, consumers and the general public of the State of Wyoming for the reason that any such order would appear to affect adversely the capital structure and revenue requirements of the entity which after divestiture will be supplying natural gas to gas distributors, to industries, and the people of Wyoming; that the capital structure and revenue requirements of the new company will in a large measure be determinative of its rates and charges for natural gas furnished to the people of Wyoming.

V

There is no other party to the above-entitled matter which will adequately protect the interests of the people of the State of Wyoming and applicant in those matters that may arise before this Court if intervention is granted any of those seeking intervention herein.

VI

No pleadings are submitted with this application for the reason that all issues raised by the pleadings herein have been resolved and applicant does not seek to challenge the ruling of the Supreme Court.

[fol. 192] VII

The intervention of applicant will in no way broaden the issues before this Court, nor will it unduly delay the proceedings or prejudice the adjudication of the rights of the original parties, or be in conflict with the policy and purposes of the statute under which this action was commenced.

Wherefore, applicant prays for an order of this Court permitting it to intervene in the above-entitled cause and to participate therein as a party in intervention, if any other petitioner for intervention in this matter be granted such intervention.

Dated at Cheyenne, Wyoming, this 17th day of November, 1964.

Respectfully submitted,

A. Fred Miller, Special Assistant Attorney General, Counsel for Public Service Commission of Wyoming.

[fol. 193] Certificate of Service (omitted in printing).

[fol. 195]

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

CENTRAL DIVISION

Civil Action No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

v.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

PACIFIC GAS AND ELECTRIC COMPANY, Applicant for Intervention.

MOTION OF PACIFIC GAS AND ELECTRIC COMPANY FOR LEAVE TO INTERVENE—Filed November 18, 1964

To the Honorable Judge of the above-entitled Court:

Pacific Gas and Electric Company, a California corporation (PG&E), moves the Court for leave to intervene in the above-entitled action pursuant to Rule 24 of the Federal Rules of Civil Procedure, and in support of its motion states:

1. PG&E is a corporation incorporated under the laws of the State of California engaged, *inter alia*, in the transmission, distribution and sale of natural gas in the State of California and regulated by the Public Utilities Commission of the State of California.

2. PG&E purchases an average of one billion cubic feet [fol. 196] of natural gas per day from El Paso Natural Gas Company (El Paso) under long term contracts. El

[File endorsement omitted]

Paso's rates for its sales of gas to PG&E are established by the Federal Power Commission (FPC) on the basis of cost of service studies in which all of El Paso's costs incurred in purchasing and transmitting such gas to PG&E are included. One of the substantial components of the cost of service is the return allowed upon El Paso's production and transmission properties.

3. The location and cost of the gas produced and purchased by El Paso have a direct effect upon the rates charged by El Paso to PG&E.

4. The forthcoming proceedings before this Court are for the purpose of complying with the order of the United States Supreme Court in *United States v. El Paso Natural Gas Co.*, 376 U.S. 651 (1964) to "order divestiture without delay" (662). PG&E has an interest in the effect of such divestiture upon the properties of El Paso, its gas supply, the costs to be incurred by El Paso for gas purchased from the New Company following such divestiture, and in the overall effect of the divestiture upon El Paso's cost of rendering its service to PG&E.

5. PG&E has a right to intervene because it is so situated that it may be adversely affected by this Court's disposition of the property of El Paso. Rule 24(a)(3) of the Federal Rules of Civil Procedure.

6. It is the position of PG&E that the proceedings before this Court are for the purpose of complying with the order of the Supreme Court above referred to, which order was made pursuant to the Court's exercise of jurisdiction under the Clayton Act, and that these proceedings are concerned entirely with whether or not the proposed divestiture complies with the requirements of the order of the [fol. 197] Supreme Court and whether the arrangements between the New Company and El Paso will be compatible with the anti-trust laws. Those aspects of the divestiture involving the public convenience and necessity of the contractual arrangements between the New Company and El

Paso and the transfer by El Paso to the New Company of gas reserves and other properties presently held by El Paso are matters to be decided by the FPC pursuant to its jurisdiction under the Natural Gas Act. It is PG&E's position that as a matter of law such divestiture decree will not constitute a determination by the Court that such transfer of assets and contractual arrangements between El Paso and the New Company meet the requirements of the public interest as set forth in the Natural Gas Act since such determinations are within the exclusive jurisdiction of the FPC.

7. PG&E is an intervenor before the FPC in Docket No. G-13019, which is still pending before that commission by virtue of the remand "for further proceedings in conformity with this opinion" issued by the Supreme Court in *California v. Federal Power Commission*, 369 U.S. 482 (1962). The public convenience and necessity of the proposed transfer of assets to the New Company by El Paso and the contractual arrangements which El Paso proposes to make with the New Company are matters to be disposed of by the FPC in future proceedings which will, at least in part, constitute a continuance of said Docket No. G-13019.

8. PG&E desires to be permitted to intervene in these proceedings to express and preserve its position that as a matter of law a divestiture decree of this Court will be determinative only of the question of whether the proposed divestiture complies with the mandate of the United States Supreme Court and whether the proposed arrangements will be compatible with the anti-trust laws, and said divestiture decree will not decide any of the many questions of [fol. 198] public interest which remain to be decided by the FPC under the Natural Gas Act. If this motion is granted and PG&E is permitted to intervene it will propose to the Court that its order of divestiture herein expressly state that it is not passing on (a) whether the Sumas exchange agreement is consistent with the public convenience and necessity and in the public interest, and (b) whether the

Kingsgate exchange agreement is consistent with the public convenience and necessity and in the public interest, as such questions should be decided by the FPC in the exercise of its jurisdiction under the Natural Gas Act. Furthermore, whether the proposed charge for gathering San Juan gas and the proposed transfer of reserves in the San Juan Basin, the fairness of which is questioned by others, are consistent with the public convenience and necessity and in the public interest are matters to be determined by the FPC in the exercise of its jurisdiction under the Natural Gas Act. If any of these issues, which we contend are in the exclusive jurisdiction of the FPC, are to be passed upon by this Court we desire to be heard on their merits.

Wherefore, PG&E prays that the Court enter an order herein permitting it to intervene in these proceedings.

Dated: November 17, 1964.

Richard H. Petersson, F. T. Searls, Malcolm H. Furbush, 245 Market Street, San Francisco, California 94106, *Attorneys for Pacific Gas and Electric Company.*

Bryce E. Roe, Fabian & Clendenin, 800 Continental Bank Bldg., Salt Lake City, Utah.

[fol. 199] Certificate of Service (omitted in printing).

[fol. 201]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

v.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

WASHINGTON NATURAL GAS COMPANY, Intervenor.

MEMORANDUM OF WASHINGTON NATURAL GAS COMPANY ON APPLICATION TO INTERVENE—Filed November 18, 1964

This memorandum is submitted to the Court and to the parties in the above entitled cause pursuant to leave granted by the order of the Court dated October 21, 1964. A separate brief on legal points involved is filed with this memorandum.

In this memorandum Washington Natural Gas Company will be referred to as "Applicant" or as "Washington Natural".

The decision of the Supreme Court ordering divestiture in this case made it immediately apparent to Applicant that it would be directly affected by divestiture in whatever form it might be finally accomplished. It would be compelled to buy its entire supply of natural gas from an entirely new owner of the divested assets. To any extent that Washington Natural would be adversely affected by the divestiture there would inevitably be an adverse effect upon its stockholders, the holders of its debt securities and, equally important, its present and future customers.

Washington Natural therefore considered that it had a duty to apply to this Court for leave to intervene to protect those interests to the fullest extend possible and consistent with the mandate of the Supreme Court.

[fol. 202] Washington Natural's application for leave to intervene sets forth numerous areas in which its interests might be adversely affected by a divestiture. At the time the application was prepared no plan of divestiture had been proposed and no information was available which would adequately answer the questions set forth in the application.

From the outset, the primary interest and concern of this Applicant may be summarized as follows:

(1) New Company must have adequate reserves of natural gas to supply the needs of Applicant and other gas distributors and their customers.

(2) New Company's cost of gas must be low enough to enable it to sell gas to Applicant and others with no increase in rates.

(3) The New Company must be able to earn a fair rate of return which would be essential to its ability to grow and meet increasing demands for natural gas in all markets in which it might serve.

It is by these three standards that the interest of Washington Natural and its right to intervene in this case must be measured. If, to any material extent, the plan of divestiture presently proposed, or any proposed plan, would not satisfy these requirements, Applicant, and all those whose interests it represents would be damaged.

After filing its application for intervention Applicant endeavored to obtain evidence which would answer the questions referred to above. Since the proposed plan was not made available to it until October 14, the investigation had to be based quite largely on assumption and surmise. However, by October 19 the investigation then accomplished

lead Applicant to question whether the proposed plan would give the New Company a fair and adequate allocation of reserves and whether the cost of gas to the New Company would be so high as to require it to increase its [fol. 203] rates in order to be able to make a fair rate of return. The forecast of earnings for the single year 1965, as set forth in the plan did not satisfy Applicant that New Company would have such earning capacity. In order to test the validity of these conclusions it would have been necessary to obtain other information which is not a matter of public record and which could come only from El Paso Natural Gas Company. There was not sufficient opportunity between October 14 when the plan was received, and the date of the hearing to accomplish this.

Since all applications for leave to intervene were set for hearing on October 19th immediately following the presentation by El Paso of its explanation of the plan, Washington Natural felt that it must inform the Court at that time of its possible objections to the plan, within the areas noted above, on its best information and analysis thereof available at that time. It was impossible, on October 19, to call witnesses or submit exhibits to support these possible objections.

Since October 19, the situation has been clarified to a large degree. Information has been requested from El Paso and has been freely given.

The additional facts have been carefully analyzed and as a result, Applicant's preliminary conclusions on all three points as to reserves, cost of gas and earning power of the New Company have been revised.

The present position of Washington Natural Gas Company is as follows:

(1) A decree directing divestiture in accord with the plan filed by El Paso Natural Gas Company would not adversely affect Washington Natural Gas Company. This statement is based not only upon facts now available but also upon the two assumptions

(a) that there will be no material alteration in the
[fol. 204] plan of divestiture as presently proposed in any order, interlocutory decree or final decree for divestiture and (b) no decision or order of the Federal Power Commission will directly or indirectly affect adversely the New Company's position as to gas reserves, cost of gas and earning power.

(2) Since the proceedings before the Federal Power Commission will be separate from this case and presumably will involve issues which may not be determined by this Court, Washington Natural Gas Company reserves all rights which it may have to intervene or otherwise participate in any proceeding before the Federal Power Commission which may affect its interest.

(3) If any proposed order, interlocutory decree or final decree relating to divestiture hereafter presented to this Court would adversely affect the New Company in any of the respects referred to above, Washington Natural Gas Company should be permitted to intervene immediately and to present evidence and argument in opposition to any such adverse change from the proposed plan.

(4) If any other applicant for intervention, public or private, shall be allowed to intervene either to oppose divestiture according to the plan now on file or to propose a material revision of the plan which would be adverse to the New Company, or to propose any different plan this Applicant should be permitted to intervene and present evidence and argument supporting the present plan and opposing any departure therefrom.

(5) Unless and until any event such as described in
[fol. 205] paragraphs (3) and (4) above shall occur, the Court

should defer any ruling upon this Applicant's application for leave to intervene until final determination of this cause.

It is submitted that with the case in its present posture and the certainty that there will be future developments the effect of which upon the New Company cannot be adequately gauged at this time, the ruling upon the application of Washington Natural Gas Company for intervention should be deferred until any such development may occur. This will in no way impede the business of the court and will preserve the rights of this Applicant in the event that it shall later appear that it has a right to intervene or that its intervention should be allowed as a matter of discretion.

Respectfully submitted,

Cartano, Botzer & Chapman, By John W. Chapman, Attorneys for Applicant, Washington Natural Gas Company, 1415 Joseph Vance Building, Seattle, Washington 98101, Area Code 206—MAin 3-6700.

Local Counsel: Draper, Sandack & Saperstein, 606 El Paso Natural Gas Building, 315 East Second South, Salt Lake City, Utah.

[fol. 206] Certificate of Mailing (omitted in printing).

[fol. 207]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil Action No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

v.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

WASHINGTON NATURAL GAS COMPANY, Intervenor.

BRIEF OF WASHINGTON NATURAL GAS COMPANY—
Filed November 18, 1964

This Brief is submitted pursuant to leave granted by the order of this Court entered October 21, 1964. Its purpose is to demonstrate that Washington Natural Gas Company has the right to intervene in this case under Rule 24 of the Federal Rules of Civil Procedure.

In a separate Memorandum served and filed contemporaneously with this Brief this applicant for intervention states its position to be that if divestiture is accomplished in accord with the Plan of Divestiture which has been filed by El Paso Natural Gas Company this applicant would not be adversely affected since, in applicant's opinion at the present time, the New Company receiving the divested assets would have sufficient reserves of natural gas available at a low enough cost to enable the New Company to serve applicant and could earn a fair rate of return without the necessity of increasing its rates above those now charged by El Paso. Since this applicant does not, at this time, oppose divestiture in accordance with the

Plan on file, it does not ask that its Application for Leave to Intervene be granted at this time. However, recognizing the possibility that changes may be proposed in the Plan [fol. 208] of Divestiture which might adversely affect the New Company and thereby this applicant, applicant has requested that ruling upon its Application be deferred unless and until any such event occurs. This Brief will show that in any such event the law would require that leave to intervene be granted.

In Divestiture Cases the Court Is Not Concerned Solely With Enforcement of the Antitrust Laws.

Although the remedy of divestiture has, as its primary purpose, the enforcement of the antitrust laws, the rights and interests of the general public and of private individuals who will be directly affected must be considered and protected if that can be done without rendering the antitrust remedy less effective.

In *United States* v. *E. I. DuPont De Nemours and Company, et al,* 366 U.S. 316, 6 L.ed. 2d 318, 81 S.Ct. 1243, the Court quoted from the opinion in *United States* v. *American Tobacco Co.,* 221 U.S. 106, 185, 55 L.ed. 663, 696, 31 S.Ct. 632, as follows:

> "'In considering the subject—three dominant influences must guide our action: 1. The duty of giving complete and efficacious effect to the prohibitions of the statute; 2, the accomplishing of this result with as little injury as possible to the interest of the general public; and, 3, a proper regard for the vast interests of private property which may have become vested in many persons as a result of the acquisition either by way of stock ownership or otherwise of interests in the stock or securities of the combination without any guilty knowledge or intent in any way to become actors or participants in the wrongs which we find to have inspired and dominated the combination from the beginning.'"

In the opinion of this applicant the first objective stated in the above quotation will be fully accomplished if the proposed Plan of Divestiture is followed. This is demonstrated by the testimony of Mr. Kayser in the hearing on October 19 (Tr. p. 65, ll. 3-12). This being accomplished, [fol. 209] we submit that the Court should then consider the public and private interests and to the extent that they may be adversely affected within the sphere of operations of this applicant, applicant should be permitted to intervene to protect those interests.

As shown in its Application for Leave to Intervene, Washington Natural Gas Company represents and seeks to protect a significant segment of the public interest residing in over 100,000 rate-paying customers within its service area who would be adversely affected if the New Company should be unable to supply sufficient quantities of gas to applicant at rates no higher than those now in effect. The Application likewise shows that very substantial private interests are involved in the Company itself, in its stockholders and in the holders of its bonds and debentures. Applicant believes that it has the duty to vigorously seek the right to intervene in this case to protect both those public and private interests if any future development indicates that the proposed Plan of Divestiture may be altered in a material respect to the disadvantage of the New Company.

Intervention of Right.

Rule 24(a) of the Federal Rules of Civil Procedure provides, in part, as follows:

"(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other dis-

position of property which is in the custody or subject to the control or disposition of the court or an officer thereof."

Part (a) (2) of the Rule was applied in *Ford Motor Company* v. *Bisane Bros., Inc., et al.*, (8 Cir.—1957) 249 F. 2d 22. In that case property owners commenced a class [fol. 210] action to enjoin maintenance and operation of certain railroad trackage on the ground that it was in violation of the zoning ordinance and constituted a public nuisance. The tracks involved constituted the only facilities for rail service to a large assembly plant of the Ford Motor Company. The Defendant railroad filed a comprehensive answer showing, among other things, its obligation to provide rail service to the Ford plant. The Ford Company sought to intervene, adopting the answer of the railroad and alleged certain additional facts such as the volume of its production, volume of rail traffic serving the plant, the essential nature of rail service to keep the plant in operation, number of employees who would be put out of work by a stoppage of operations, et cetera. The application to intervene was based both upon 24(a) (2) and 24(b) providing for permissive intervention. The District Court denied intervention on both grounds holding that the Ford Company was adequately represented by the railroad and that permissive intervention should not be granted because the intervenor raised no new issues and intervention would merely delay adjudication of the case.

The Circuit Court reversed, holding that the Ford Company was entitled to intervene as a matter or right. The following is quoted from the decision:

"While there is justification for a belief that the Railroad will, at a trial of this case on the merits, adequately present to the trial court all of the evidence and all of the applicable law necessary to enable the court to consider and decide the issues raised by the pleadings, including the proposed answer of the Ford

Motor Company, it cannot be said with certainty that this will be so, and the Company insists that it will not be so and that it has a special interest that the Railroad does not represent.

"Under Rule 24(a), if the representation of the interest of the Ford Motor Company 'may be inadequate', that is enough, provided also that the Company is or may be bound by a judgment in the action. Since the Company is not an indispensable or even a necessary party [fol. 211] to this case, and has been denied intervention, it cannot be said that, in a technical or literal sense, it would be bound by a judgment against the Railroad; but we think that in a very real sense it would be bound, since obviously such a judgment would have the practical effect of depriving the Company of its claimed right to have the Railroad furnish the service which is essential to the operation of the Company's plant and to retain the means of furnishing the service. The Company is confronted with the possibility of being deprived in this litigation of essential Railroad service, to which it claims to be entitled through the Railroad's being permanently deprived of the means of furnishing the service and thus being relieved of the obligation of having to furnish it." (249 F. 2d 22, 27)

In the *Ford* case, the Circuit Court pointed out that there were three interests involved, that of the residential property owners, that of the railroad as a common carrier and that of the Ford Company as a shipper. In the case before this Court, there are at least four interests: (1) the interest of the government in enforcing the antitrust laws, (2) the interest of El Paso in complying with the Supreme Court mandate and, at the same time, retaining as much of its assets from divestment as may be possible, (3) the interest of New Company to receive adequate assets, including low cost gas, to enable it to serve its markets and

make a reasonable profit, and (4) the interests of the rate-payers of the gas distribution companies, those companies themselves and their stockholders and debt holders. There is at this time no New Company and no one to represent it or speak for its interest. It cannot be presumed that the Department of Justice will speak for it or could adequately do so. With all respect to the attorneys for the government and their staff assistants, Washington Natural Gas Company sincerely doubts that they could expeditiously research and present to this Court the complicated and technical operating problems of the New Company [fol. 212] as a pipeline operator or the directly related problems of Washington Natural, and other distributors and the public and private interests which they seek to protect. Nor can it be presumed that the Federal Power Commission, as *Amicus Curiae* can, in this judicial proceeding, adequately represent the interests of either the New Company or applicant or those whose interests it would protect by intervention.

Under Rule 24(a) (2) there are two elements, inadequacy of representation and that the party seeking to intervene ". . . is or may be bound by a judgment in the action . . .". In the *Ford Motor Company* case, the Circuit Court held that it is sufficient to meet the second requirement if the practical effect of the judgment will be binding upon the applicant. This clearly goes beyond the conventional limits of *res judicata*. In the case at bar, Washington Natural Gas Company, being entirely dependent upon the New Company for its sole source of supply of natural gas will inevitably be bound by the effect of the divestiture decree and so will its rate-payers, stockholders and the holders of its bonds and debentures. If the decree should not award to the New Company sufficient gas reserves available at reasonable prices, all of them will suffer.

Under part (3) of Rule 24(a) intervention must be granted as a matter of right "when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or

subject to the control or disposition of the court or an officer thereof."

In *Sutphen Estates, Inc.* v. *United States of America, et al,* 342 U.S. 19, 96 L.ed. 19, 72 S.Ct. 14, Warner Bros. Pictures, Inc. was ordered to reorganize, under the Sherman Act, by splitting into two corporations, one to receive the theater assets and the other to receive the production and distribution assets. Sutphen Estates, as lessor, had entered into a long term lease of its theater properties [fol. 213] to a subsidiary of a subsidiary of Warner Bros. The lease was guaranteed by Warner. Under the reorganization, this guaranty would be assumed only by the theater corporation and Sutphen sought to intervene claiming that the guaranty would be rendered less valuable because not supported by the full credit of the original Warner Bros. Pictures, Inc.

The Supreme Court held that the case was one involving a "distribution or other disposition of property which is in the custody or subject to the control or disposition of the court . . ." within the meaning of Rule 24(a) (3). The Court denied intervention as a matter of right. The following is quoted from the decision:

> "We do not think, however, that on this record appellant has shown that it will be 'adversely affected' by the reorganization within the meaning of Rule 24(a) (3). It will have the guaranty of the new theater company. No showing is made or attempted that that company lacks the financial strength to assume the responsibilities of the guaranty. No showing is made or attempted that the contingent liability under the guaranty is so imminent and onerous as to make the guaranty of the new company substantially less valuable than the guaranty of Warner's. For all we know, a guaranty of a company in the theater business, freed from the hazards of the production and distribution business, may be even more valuable than the guaranty of Warner's. We do not pass here on the fair-

ness of the plan of reorganization. Cf. *Continental Ins. Co.* v. *United States*, 259 U.S. 156, 66 L.ed. 871, 42 S.Ct. 540. We hold only that appellant has not maintained the burden of showing that under Rule 24(a) (3) it may intervene as of right." (342 U.S. 19, 22)

The above decision, although adverse to the intervenor, determines that, if an intervenor does show that it will be adversely affected by disposition of property in an anti-trust proceeding, it will be entitled to intervene as a matter of right.

In the present case, further study of the proposed Plan of Divestiture in the light of additional information not available to applicant at the time of the hearing on October [fol. 214] 19 has led it to the conclusion that it will not be adversely affected if divestiture is accomplished strictly in accord with the proposed Plan which has been filed. However, if another intervenor or some other party is permitted to advocate an alteration of the Plan, or the adoption of an entirely different plan, which would result in divestment of El Paso assets to New Company or some other entity in a manner which would adversely affect applicant, it should be entitled to make an offer of proof showing that it will be adversely affected and to submit all available evidence to prove that result. Such proof would establish its *right* to intervene under Rule 24(a) (3).

At the present time, no such offer of proof can be made for the proposed Plan does not present an adverse effect upon applicant. It knows of no proposed modification of the Plan of any kind and it would be indeed idle to speculate as to possible modifications and offer proof that they would be damaging to applicant's interest.

Permissive Intervention.

Rule 24(b) provides for permissive intervention "... (2) when an applicant's claim or defense and the main action have a question of law or fact in common. ..."

As pointed out at the beginning of this Brief, the Decree of Divestiture should not only provide an efficacious enforcement of the antitrust laws, it should also protect the public interest and private interests to the extent possible without impairing the antitrust remedy. Within the two areas of public interest and private interest, applicant has a "claim or defense" which it should be permitted to advance by intervention in this cause. Although applicant firmly believes that it would be entitled to intervene, as a matter of right, if any subsequent proposal should threaten an adverse affect within these areas, it also believes that as a matter of justice, the Court should exercise its sound discretion to permit intervention even if the Court should [fol. 215] determine that intervention of right is not available to applicant. The allegations of the Application for Leave to Intervene, the oral statement to the Court by counsel for applicant during the hearing on October 19, the foregoing portion of this Brief and the Memorandum filed therewith clearly show that the interests of the public and the private interests referred to may not be adequately represented by any party presently in the case if an adverse proposal shall be advanced hereafter. In that event, the applicant, with its peculiar knowledge of the problems of that portion of the public served by it and the possible adverse impact upon itself, its stockholders and creditors, could offer evidence and argument not within the capability of any other party or intervenor. It would not be merely echoing the contentions of others by cumulative evidence and redundant argument.

Ruling on the Application to Intervene Should Be Deferred Pending Further Developments.

Although Washington Natural Gas Company believes that it is entitled to intervene in this case, it does not urge that a ruling upon its Application be made at this time. Rather, as its position is stated in the accompanying Memorandum, it believes that its Application should be held in

abeyance. If another party, public or private, should be permitted to intervene either to oppose divestiture according to the Plan now on file or to propose a material revision of the Plan which would be adverse to the New Company and this applicant, or if any proposed order, interlocutory decree or final decree relating to divestiture hereafter presented to this Court would adversely affect the New Company or applicant, Washington Natural Gas Company should be permitted as soon as possible to offer proof and argument in opposition to the proposed adverse change. Deferral of a ruling upon the Application as requested will not in any way interfere with expeditious divestiture and would leave the applicant in a position in which it would be able, with the least possible delay, to reassert its [fol. 216] right to intervene for the protection of the interests of the New Company, the public, itself and its investors which could not be adequately represented by any other party.

Although Washington Natural Gas Company does not oppose divestiture according to the Plan now on file, it must be recognized that it may be forced to change its position if any future development so requires. Because of this, it fully reserves its rights to participate in any proceeding of the Federal Power Commission and its right to intervene in this case if future circumstances so warrant.

Respectfully submitted,

Cartano, Botzer & Chapman, John W. Chapman, Of Counsel for Washington Natural Gas Company, 1415 Joseph Vance Building, Seattle, Washington 98101, MAin 3-6700.

[fol. 217] Certificate of Mailing (omitted in printing).

[File endorsement omitted]

[fol. 218]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

v.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

INTERMOUNTAIN GAS COMPANY, Intervenor.

APPLICATION FOR LEAVE TO INTERVENE
—Filed November 18, 1964

Intermountain Gas Company respectfully petitions for leave to intervene in the above entitled proceeding, pursuant to Rule 24 of Federal Rules of Civil Procedure, on the following grounds and for the following reasons:

I

Applicant is a gas utility engaged in the distribution of natural gas throughout southern Idaho serving more than 40 communities, its territory extending from Montpelier, Idaho to Weiser, Idaho. Applicant holds Certificate of Convenience and Necessity for such area and is a regulated utility subject to the jurisdiction of the Idaho Public Utilities Commission.

II

At the end of 1963 Applicant was serving in excess of 42,000 customers and has added approximately 4,800 customers during 1964.

III

Applicant purchases natural gas from El Paso Natural Gas Company for resale to its customers and in 1963 purchased approximately 18 billion cubic feet for this purpose.

[fol. 219]

IV

Applicant serves a fast developing area, especially in the area of food processing and the manufacture of fertilizers and it is of vital importance to the Applicant and to its entire service area that adequate future natural gas be available to supply the needs of consumers in this area.

V

Applicant is aware of the above proceedings, has closely followed the developments therein and has carefully studied the proposed plan of divestiture submitted by El Paso Natural Gas Company. In the judgment of the Applicant such plan is fair and equitable to the interested parties and affords fair and reasonable uniform protection to the companies and areas dependent upon this natural gas supply. Applicant endorses such plan and urges the Court to place the same into effect as soon as possible to insure the stability of the new company and the operation of this natural gas system. Applicant states that such plan is, in its judgment, in the public interest and should be approved.

VI

Applicant herein refers to the "Memorandum of Mountain Fuel Supply Company in Support of Motion to Intervene" which is being submitted by that company in support of its application to intervene and by this reference adopts said Memorandum in support of this application to the extent that such memorandum is not inconsistent herewith.

Wherefore, Applicant respectfully petitions for an order of this Court permitting it to intervene in this cause in

support of the plan for divestiture submitted by El Paso Natural Gas Company.

Respectfully submitted,

Intermountain Gas Company, By Ralph F. Gibson, President; Marcus, Leggat & Marcus, By Claude Marcus, Counsel, 625 First National Bank Building, Boise, Idaho.

[fol. 220] Affidavit of service (omitted in printing).

[fol. 222]

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

SALT LAKE CITY, UTAH

NOTICE OF HEARING ON DECEMBER 2, 1964

To:

William T. Thurman, Esq., U. S. Attorney, 200 Post Office & Courthouse Bldg., Salt Lake City, Utah

Jack Louis Lipson, Esq., Dept. of Justice, Washington, D. C.

Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, Salt Lake City, Utah

Arthur H. Dean, Esq., Sullivan & Cromwell, 48 Wall Street, New York, New York

Gregory A. Harrison, Esq., Brobeck, Phlegar & Harrison, 111 Sutter Street, San Francisco, California

Ray, Quinney and Nebeker, Suite 300, 65 South Main, Salt Lake City, Utah

Leon M. Payne, Esq., 2200 Gulf Bldg., Houston 2, Texas

Richard W. Sabin, Esq., State of Oregon, Public Utility Comm., Salem, Oregon

Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., Salt Lake City, Utah

James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington

Keith Sohm, Esq., 301 State Capitol Bldg., Salt Lake City, Utah

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Paul B. Cannon, Esq., Continental Bank Bldg., Salt Lake City, Utah

Virgil H. Wedge, Esq., First Natl. Bank of Nevada, 1 East 1st St., Reno, Nevada

Larry Pankonien, Esq., Box 2511, Houston, Texas

Robert L. Simpson, Esq., Paine, Lowe, Coffin, Herman & O'Kelly, 602 Spokane and Eastern Bldg., Spokane, Washington

William M. Bennett, Esq., Public Utilities Comm., State of California, San Francisco, California

Harold W. Pierce, Esq., 735 S. W. Morrison Street, Portland, Oregon

Rex J. Hanson, Esq., Kearns Bldg., Salt Lake City, Utah

Richard A. Solomon, General Counsel; Howard E. Wahrenbrock, Solicitor; Joel Yohalem, Attorney, Federal Power Commission, Washington, D. C.

Richard B. Hooper, Esq., Norton Building, Seattle 4, Washington

Re: C 143-57

UNITED STATES OF AMERICA

—vs.—

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORP.

Please Take Notice, that the above entitled case has been set for Hearing on Motions to Intervene on Wednesday, December 2, 1964 at 10:00 a.m. in Salt Lake City, Utah before Honorable Willis W. Ritter.

Andrew John Brennan, Clerk, By: hs, Deputy Clerk.

cc:

Roger J. Nichols, Esq., 810 South Flower Street, Los Angeles, California

John T. Murphy, Esq., Public Utilities Commission of State of California, 5072 State Building, San Francisco, California (94102)

A. Fred Miller, Esq., Office of Attorney General, State of Wyoming, 210 Supreme Court Building, Cheyenne, Wyoming

Richard H. Peterson, Esq., 245 Market Street, San Francisco, California (94106)

Bryce E. Roe, Esq., 800 Continental Bank Bldg., SLC

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Marcus, Leggat & Marcus, 625 First National Bank Bldg., Boise, Idaho

Charles H. McCrea, Esq., 2011 Las Vegas Blvd. South, P. O. Box 1450, Las Vegas

H. Wright Volker, Esq., Asst. Attorney General, State Capitol Bldg., SLC

November 18, 1964

[fol. 223]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

No. C 143-57

UNITED STATES OF AMERICA, Plaintiff,

v.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants.

ORDER THAT PUBLIC SERVICE COMMISSIONS FOR THE STATES OF WASHINGTON, OREGON AND IDAHO MAY HAVE ADDITIONAL TIME TO FILE DATA—November 18, 1964

Deputy United States Attorney Mr. Lorin J. Broadbent, Esq., representing the United States, and Mr. Dennis McCarthy, Esq., representing El Paso Natural Gas Company, appearing November 18th, 1964, on behalf of the Public Service Commissions for the States of Washington, Oregon, and Idaho, and requested an extension of time, until November 24, 1964, within which to file the supporting data heretofore requested by the court in connection with their petitions for intervention.

It Is Ordered that the Public Service Commissions for the States of Washington, Oregon, and Idaho, are given additional time in which to file the data requested, on or before November 24, 1964.

Dated this 18th day of November, 1964.

Willis W. Ritter, Chief Judge.

[File endorsement omitted]

[fol. 224]

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

SALT LAKE CITY, UTAH

November 18, 1964

Notice (Rule 77(d)) Mailed to Counsel of Record of Order Extending Time, etc.

To:

William T. Thurman, Esq., U. S. Attorney, 200 P. O. & Courthouse Bldg., SLC

Jack Louis Lipson, Esq., Dept. of Justice, Washington, D. C.

Van Cott, Bagley, Cornwall & McCarthy, 65 South Main, Salt Lake City, Utah

Arthur H. Dean, Esq., 40 Wall Street, New York, New York

Gregory A. Harrison, Esq., 111 Sutter Street, San Francisco, California

Ray, Quinney and Nebeker, Suite 300, 65 South Main, Salt Lake City, Utah

Leon M. Payne, Esq., 2200 Gulf Bldg., Houston 2, Texas

Richard W. Sabin, Esq., State of Oregon, Public Utility Comm. Salem, Oregon

Calvin L. Rampton, Esq., El Paso Natural Gas Bldg., Salt Lake City, Utah

James R. Cunningham, Esq., Asst. Attorney General, State of Washington, Temple of Justice, Olympia, Washington

Keith Sohm, Esq., 301 State Capitol Bldg., Salt Lake City, Utah

Larry D. Ripley, Esq., Asst. Attorney General, State of Idaho, Boise, Idaho

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Brigham E. Roberts, Esq., 530 Judge Bldg., Salt Lake City, Utah

C. Keefe Hurley, Esq., 60 State Street, Boston 9, Massachusetts

Joseph S. Jones, Esq., Walker Bank Bldg., Salt Lake City, Utah

Paul B. Cannon, Esq., Continental Bank Bldg., Salt Lake City, Utah

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Larry Pankonien, Esq., Box 2511, Houston, Texas

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William M. Bennett, Esq., Public Utilities Comm., State of California, San Francisco, California

Harold W. Pierce, Esq., 735 S. W. Morrison Street, Portland, Oregon

Rex J. Hanson, Esq., Kearns Bldg., Sale Lake City, Utah

Richard A. Solomon, General Counsel; Howard E. Wahrenbrock, Solicitor; Joel Yohalem, Attorney, Federal Power Commission, Washington, D. C.

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Richard H. Peterson, Esq., 245 Market Street, San Francisco, California

Bryce E. Roe, Esq., Continental Bank Bldg., Salt Lake City, Utah

Marcus, Leggat & Marcus, 625 First National Bank Bldg., Boise, Idaho

Re: C 143-57

UNITED STATES OF AMERICA

—vs.—

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORP.

Take Notice, in accordance with Rule 77(d) of the Federal Rules of Civil Procedure, you are hereby notified that:

Order allowing the Public Service Commissions for the States of Washington, Oregon, and Idaho, to November 24, 1964, to file supporting data heretofore requested by the Court (copy attached)

was signed by Honorable Willis W. Ritter on the 18th day of November, 1964, and entered in the Docket as of the 18th day of November, 1964.

Andrew John Brennan, Clerk, By: D. Scott, Deputy Clerk.

[fol. 225]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

v.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants.

MEMORANDUM OF MOUNTAIN FUEL SUPPLY COMPANY IN SUPPORT OF MOTION TO INTERVENE—Filed November 18, 1964

On July 31, 1964, Mountain Fuel Supply Company (hereinafter called "Mountain Fuel") filed a Motion to Inter-

[File endorsement omitted]

vene in the above entitled proceedings pursuant to Rule 24 of the Federal Rules of Civil Procedure on the ground and for the reason that Mountain Fuel is a utility customer served from facilities to be divested by El Paso Natural Gas Company (hereinafter called "El Paso"), and has several important Agreements relating to purchase, gathering and exchange of natural gas with El Paso which require use of facilities to be divested. As a consequence, Mountain Fuel may be adversely affected by the divestiture which must take place herein.

Whatever divestiture Order is ultimately entered, it is certain that El Paso will no longer own, control or operate the divested properties and will, therefore, no longer be party to the aforementioned Agreements with Mountain Fuel. It follows that a new entity must assume and be charged with performance of the Mountain Fuel Agreements and that the character of performance of such new entity could quite readily affect Mountain Fuel adversely and also have a substantial effect upon the customers of Mountain Fuel in Utah and Wyoming and upon the economic wellbeing of these states.

[fol. 226] In support of its Motion, Mountain Fuel respectfully directs the attention of the Court to the language of Rule 24(a)(3) of the Federal Rules of Civil Procedure:

> "(a) *Intervention of Right.* Upon timely application anyone shall be permitted to intervene in an action: . . . (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof."

and to the following statement from 52 Columbia Law Review 926:

> "The paucity of cases arising under Section 24(a)(3) prevents extensive analysis. But this much is clear: it extends beyond the in rem cases where Petitioner

must assert his claim or be forever foreclosed. Although a judgment is not 'binding' on Petitioner, if as a practical matter it will adversely affect his interests, intervention may be had as of right. In this respect, Section 24(a)(3) is broader than the more widely used 24(a)(2)."

To demonstrate that, as a practical matter, the divestiture order may adversely affect the interests of Mountain Fuel, a copy of each of its Agreements with El Paso is attached and summarized as follows:

1. Exhibit 1. Rate schedule X-1, as filed with the Federal Power Commission, consisting of an Agreement between Mountain Fuel and Pacific Northwest Pipeline Company, under which El Paso, as successor to Pacific, exchanges certain volumes of natural gas with Mountain Fuel in Wyoming. During 1963, 12,135,677,000 cubic feet of gas was exchanged by the parties pursuant to this Agreement.

2. Exhibit 2. Rate schedule X-2, as filed with the Federal Power Commission, consisting of an Agreement between Pacific Northwest Pipeline Corporation (which company was succeeded by El Paso) and Mountain Fuel, under which each gathers gas of the other in areas where one company owns production in the vicinity of the other's gathering system. Both companies have gathering systems covering different areas in the Big Piney, LaBarge gas producing area of Wyoming. The Agreement avoids unnecessary duplication of gathering facilities. During 1963, Mountain Fuel gathered 1,286,581,000 cubic feet of gas for El Paso and El Paso gathered 1,684,251,000 cubic feet for Mountain Fuel.

3. Exhibit 3. Service Agreement between Mountain Fuel and Pacific Northwest Pipeline Company and Rate schedule PL-1 under which such service is rendered by El Paso as successor to Pacific. During 1963,

Mountain Fuel received 18,747,094,000 cubic feet of gas from El Paso pursuant to this Agreement and paid El Paso $5,015,358.86 therefor.

4. Exhibit 4. El Paso Rate Schedule XS-PL-1 under which Mountain Fuel purchased 15,852,000 cubic feet of gas in 1963 at a cost of $4,042.26.

Pressure base for volumes stated in paragraph 1 above is 15.025 pounds per square inch absolute as required by that contract. All other volumes are stated at 14.73 pounds per square inch absolute. All of the foregoing Agreements are [fol. 227] still in full force and effect and are being performed by the parties.

In view of the importance of each of the above Agreements, substitution of one "performer" for another, pursuant to divestiture Order, is of primary importance. A comparison of El Paso with its proposed "new company" is therefore significant. The information in the following paragraph has been taken from the divestiture proposal formally introduced into evidence in this case by El Paso during proceedings before the Court on October 19, 1964, from testimony of El Paso witnesses, Howard Boyd and Paul Kayser, and from statements of counsel upon the same occasion.

The new company will have a debt capitalization of $185,469,238 (Tab 2, El Paso Divestiture proposal), or less than one-fourth that of El Paso ($824,995,000, Tab 11, El Paso Divestiture proposal). The debt interest rate of "new company" will be ⅛ of 1% higher than that of El Paso (Testimony of Howard Boyd, Transcript, page 22). While the reserves of El Paso are not formally before the Court, it is obvious that the reserves of new company will be much smaller than the present El Paso reserves and, counsel has raised serious questions concerning the price of reserves El Paso proposes to allocate to the new company (Statement of counsel Meiburger, Transcript, pages 92, 93, 94) and indicates that new company should receive a greater

share of lower priced San Juan gas. Management of the new company is still an unknown (El Paso proposal, page 6), except that El Paso, which has demonstrated its capability in the management of the properties, wants to be "completely away from the company, with no shadow of control." (Testimony of Paul Kayser, Transcript, page 66). Rates for the new company are calculated at El Paso's existing rates for service from its Northwest Division (El Paso proposal, page 7) but, as previously stated, the price of reserves might well force upward adjustments in rates and, obviously the ⅛ of 1% higher debt interest rate will have an impact upon rates. Possibly this is why El Paso simply expects the "new company to accept the terms of the rate settlement, which rate settlement as to the Northwest [fol. 228] Division was made with the Federal Power Commission and approved by the Federal Power Commission . . . " (Testimony of Howard Boyd, Transcript, page 55). As a customer company, Mountain Fuel is vitally interested in the rates of "new company" and in considerations upon division of properties which will affect rates.

Other comparisons could be made from data already before the Court. However, from the above, it is apparent that a much smaller "new company", with substantially lesser reserves of gas and cash will, if the El Paso proposal is adopted, emerge and "stand in the shoes" of El Paso as far as Mountain Fuel is concerned. Management and rates of new company are unknown quantities, and while rates are properly the subject of jurisdiction of a regulatory agency rather than this Court, still the management permitted by the Court and the division of reserves between El Paso and new company are exclusive matters of jurisdiction of this Court and have an all too apparent effect upon the general rate area the regulatory agency must function within. It is a well known principle of regulatory law that rates must not be confiscatory and, therefore, may not ignore cost items such as the purchase price of natural gas.

While other potential intervenors, through filed pleadings and otherwise, indicated positions and interests which, if pursued, could adversely affect Mountain Fuel, suffice it to say that the above comparisons, taken from data and testimony now before the Court, provide sufficient information to show that without question Mountain Fuel may be adversely affected by the disposition of properties divested by the Court upon divestiture, and, therefore, is entitled to intervention as a matter of right within the purview of Rule 24(a)(3) as interpreted by the U. S. Supreme Court in *Sutphen Estates, Inc.*, Appellant vs. *United States of America, Loew's, Inc., Warner Brothers Pictures, Inc., et al.*, 342 U.S. 19; 96 L.Ed. 19; 72 S.Ct. 14.

Mountain Fuel also claims entitlement to intervention under Rule 24(a)(2) on the ground and for the reason that [fol. 229] it will be bound by the decree entered herein and its interest is not represented by any other party.

Dated November 18, 1964.

Respectfully submitted,

Ray, Rawlins, Jones & Henderson, Joseph S. Jones, C. E. Henderson, Attorneys for Mountain Fuel Supply Company, 800 Walker Bank Building, Salt Lake City, Utah.

Address of
Mountain Fuel Supply Company: 180 East First South Street, Salt Lake City, Utah.

[fol. 230] Certificate of Service (omitted in printing).

[fol. 231]

EXHIBIT 1 TO MEMORANDUM

MOUNTAIN FUEL SUPPLY COMPANY
FPC Gas Tariff
Original Volume No. 1 Original Sheet No. 4

Rate Schedule X-1

Agreement Between

Pacific Northwest Pipeline Corporation

and

Mountain Fuel Supply Company

Dated

July 1, 1959

Issued by: W. T. Nightingale, President
Issued on: December 5, 1958 Effective FEB 12 1959

[fol. 232]

Gas Exchange Agreement

This Agreement, made and entered into at Salt Lake City, Utah, this *1st* day of July, 1958, by and between Mountain Fuel Supply Company ("Mountain Fuel") and Pacific Northwest Pipeline Corporation ("Pacific"),

Witnesseth:

Whereas, Mountain Fuel owns or controls gas reserves in the Big Piney-LaBarge area, Sublette and Lincoln counties, Wyoming, from which gas will be available for production in the summer of 1958; and

Whereas, additional time is required by Mountain Fuel to obtain adequate deliverability and reserves data to determine whether the volume of gas to be available to it from said area in the future will be sufficient to justify construction of its own pipeline from said area to its existing gas transmission system; and

Whereas, Pacific plans to increase its lateral pipeline capacity from the Big Piney-LaBarge area during the summer of 1958, and, if its plans in this regard are duly accomplished, will have lateral pipeline capacity serving the Big Piney-LaBarge area in excess of its requirements at least until September 30, 1961, by which time Mountain Fuel expects to have the deliverability and reserves data required to enable it to determine whether it should construct its own pipeline; and

Whereas, Mountain Fuel and Pacific desire to enter into a gas exchange agreement whereby Mountain Fuel will deliver to Pacific gas to be produced and purchased by Mountain Fuel in the Big Piney-LaBarge area, and, in exchange therefor, Pacific will deliver gas to Mountain Fuel at points [fol. 233] connecting with Mountain Fuel's pipeline system, all as more particularly set out below;

Now, therefore, premises considered, and in consideration of the mutual covenants and agreements herein below

set out, Mountain Fuel and Pacific agree and contract for an exchange of gas between them upon the following terms and conditions:

ARTICLE I

Points of Delivery and Pressure

1.1 Subject to the other provisions of this agreement, on or about October 1, 1958 Mountain Fuel shall commence delivery of gas to Pacific and Pacific will receive such gas at points located on Pacific's Big Piney lateral line, such points being hereinafter referred to as "Receipt Points."

1.2 Upon the date Mountain Fuel shall commence deliveries to Pacific as provided in "1.1" above, Pacific shall commence the delivery of gas to Mountain Fuel at or near either or both of the following points, as Mountain Fuel shall direct:

(a) The point of intersection of the lines of the two companies near Green River, Wyoming;

(b) A point on Pacific's main pipeline near Pacific's Compressor Station No. 7,

said points being hereinafter referred to as "Delivery Point" or "Delivery Points." At any time or times during the term of this contract, Mountain Fuel may direct changes in the amounts of gas to be received by it at either or both of said delivery points.

[fol. 234] 1.3 Mountain Fuel will deliver gas to Pacific at Receipt Points at a pressure sufficient to deliver gas into Pacific's Big Piney lateral line against the working pressures in the line, but at not more than 860 psig. Pacific shall provide Mountain Fuel with adequate notice of any planned changes in operating pressures of the Big Piney lateral line which might require changes in Mountain Fuel's facilities or operations, provided Pacific shall not increase such working pressures beyond 860 psig. Pacific will deliver gas

to Mountain Fuel at such pressures as Mountain Fuel may require, up to 600 psig near Green River, Wyoming, and up to 650 psig near Pacific's Compressor Station No. 7, provided that Mountain Fuel may request and receive deliveries at such higher pressures as may be maintained by Pacific at the Delivery Point concerned at the time of any such request.

Article II

Quantity and Balancing of Deliveries

2.1 Not less than thirty days prior to the commencement of the exchange of gas under this agreement, Mountain Fuel will furnish Pacific an estimate of the quantities of Mountain Fuel's average daily exchange deliveries for the period ending September 30, 1959, and between July 15 and August 1 of each year, commencing with the year 1959, Mountain Fuel will furnish Pacific an estimate of the quantities of Mountain Fuel's average daily exchange deliveries for the twelve months' period beginning on the following October 1, such estimates to be as accurate and dependable as is practical for Mountain Fuel to furnish at the time. Mountain Fuel also shall furnish Pacific monthly estimates of Mountain Fuel's average daily exchange deliveries for [fol. 235] each calendar month, each such monthly estimate to be delivered to Pacific on or before the 15th day of the calendar month next preceding the calendar month covered by the estimate. The quantity of gas which Pacific shall be obligated to exchange under the provisions of this agreement during the period covered by any such estimate (other than the monthly estimates) shall not exceed the average daily exchange deliveries as set out in such estimate, multiplied by the number of days in the period covered by the estimate plus 10 per cent of such total. The quantity of gas to be exchanged on any one day, however, shall in no event exceed 100,000 MCF. Pacific shall be required to deliver to Mountain Fuel at the Delivery Points the same quantities of gas as Pacific receives from Mountain Fuel at the Re-

ceipt Points. The quantities of gas referred to in this paragraph shall be adjusted in accordance with the provisions of Paragraph 2.2.

2.2 All gas delivered by Mountain Fuel to Pacific at the Receipt Points and all gas delivered by Pacific to Mountain Fuel at the Delivery Points shall have a heating value of not less than 985 B.t.u. per cubic foot and either party may refuse to accept from the other gas having a lower heating value. For the purpose of determining the volume equivalents of gas to be exchanged hereunder, the volume of gas delivered by Mountain Fuel to Pacific, as well as that delivered by Pacific to Mountain Fuel, during each day, shall be adjusted in accordance with the B.t.u. content of the gas so exchanged, by the use of the following factors: [fol. 236]

B.t.u. Range	*Factor*
985-1000	0.96
1001-1025	0.98
1026-1050	1.00
1051-1075	1.02
1076-1100	1.05
1101-1125	1.07
1126-1150	1.10
1151-1175	1.12
1176-1200	1.14

2.3 Pacific and Mountain Fuel shall cooperate in developing procedures to balance the quantities of daily deliveries with the previously estimated quantities, and to balance Mountain Fuel's daily inputs at Receipt Points. Departures from the estimated deliveries and receipts shall be kept to a minimum permitted by operating conditions.

2.4 Anything in this agreement to the contrary notwithstanding, Pacific shall not furnish to Mountain Fuel during any calendar month any quantity of gas (adjusted in accordance with the provisions of paragraph 2.2 above) in excess of the quantity delivered by Mountain Fuel to Pacific

during the same calendar month, nor shall Mountain Fuel accept delivery of any such excess gas.

Article III

Quality of Gas

3.1 The gas exchanged hereunder shall be merchantable natural gas and shall not contain more than one-quarter (¼) grain of hydrogen sulphide nor more than twenty (20) grains of organic sulphur per one hundred cubic feet and not more than five per cent (5%) by volume of carbon dioxide.

[fol. 237] 3.2 The gas shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered and in no event have a water content in excess of seven (7) pounds per one million cubic feet (1000 MCF).

Article IV

Billing and Payment

4.1 Mountain Fuel agrees to pay Pacific four cents (4¢) per each one thousand (1000) cubic feet of gas delivered for exchange by Mountain Fuel to Pacific at Receipts Points.

4.2 On or before the 5th day of each calendar month, Mountain Fuel shall furnish Pacific a statement reflecting the total amount and B.t.u. content of gas delivered by Mountain Fuel to Pacific at the Receipt Points during the preceding calendar month and on or before the 15th day of the calendar month in which Pacific shall receive said statement, Pacific shall submit to Mountain Fuel a statement for the exchange service rendered during the preceding calendar month, together with Pacific's statement of volume and B.t.u. content of gas exchanged. Both Pacific and Mountain Fuel shall have the right to examine at reasonable times books, records and charts of the other to the extent necessary to verify the accuracy of any statement,

charge or computation made pursuant to the provisions hereof.

4.3 On or before the 25th day of each month, Mountain Fuel shall pay Pacific at Pacific's General Office in Salt Lake City for the exchange service rendered by Pacific during the preceding calendar month.

[fol. 238] 4.4 The minimum bill payable by Mountain Fuel to Pacific for any twelve month's period extending from October 1 of any year to September 30 of the next succeeding year shall be Nine Dollars ($9.00) per each One Thousand (1,000) cubic feet of Mountain Fuel's average daily exchange delivery at Receipt Points rounded to the nearest MCF specified in the applicable estimate (other than monthly estimates) to be furnished by Mountain Fuel under the provisions of Paragraph 2.1. The minimum bill payable by Mountain Fuel to Pacific for the period ending September 30, 1959, if less than twelve months, shall be prorated. If such minimum bill payable by Mountain Fuel to Pacific shall exceed actual payments made by Mountain Fuel for exchange services during the applicable period, then Mountain Fuel shall pay to Pacific such difference (within 30 days before November 1 next) following the close of such period.

4.5 In the event an error is discovered in the amount billed in any statement rendered by Pacific, such error shall be adjusted within thirty (30) days of the determination thereof, provided that claim therefor shall have been made within twelve (12) months from the date of such statement.

4.6 If either party should fail to pay the other any amount owing under the terms of this agreement when such amount is due, interest on the unpaid portion of the bill shall accrue at the rate of six per cent (6%) per annum from the due date until the date of payment. If such failure to pay continues for thirty (30) days after payment is due, the creditor party, in addition to any other

remedy it may have, may, after obtaining any requisite authorization, suspend further delivery of gas until such [fol. 239] amount is paid; provided, however, that if the debtor party in good faith shall dispute the amount of any such bill or part thereof and shall pay to the other such amounts as it concedes to be correct, then such other party shall not be entitled to suspend further delivery of gas.

Article V

Measurement

5.1 *Unit of Volume.*

The unit of volume of gas for all purposes hereunder (except for computation of heating value) shall be one (1) cubic foot at an absolute pressure of fourteen and seventy-three hundredths (14.73) pounds per square inch at a temperature of sixty degrees Fahrenheit (60° F.).

5.2 *Determination of Volume.*

Unless otherwise agreed by the parties hereto in writing, the volume of gas delivered hereunder shall be computed in accordance with the methods prescribed in Gas Measurement Committee Report No. 3, Natural Gas Department, American Gas Association, including the Appendix thereto, dated April 1955, and proper correction shall be made for deviation from Boyle's Law.

5.3 *Specific Gravity.*

The specific gravity of the natural gas shall be determined by the delivering party each month (joint tests if desired by receiving party) on or as near the first of each month as practicable by means of an Edwards type balance or by such other methods as may be agreed upon in writing by the parties hereto.

[fol. 240] 5.4 *Flowing Temperatures.*

The flowing temperature of the gas in the meters shall be determined by means of a recording thermometer to be in-

stalled in accordance with the recommendations contained in the said Gas Measurement Report No. 3, and the arithmetic average temperature each day shall be used in computing the deliveries of gas during such day.

5.5 *Assumed Atmospheric Pressure.*

The average absolute atmospheric pressure at each delivery point and receipt point hereunder shall be determined by the parties on the basis of the application of the customary formula to the actual elevation of such delivery point or receipt point and such determination shall govern, irrespective of variations in such atmospheric pressure from time to time.

5.6 *Heating Value.*

The heating value of gas exchanged hereunder shall be determined under the conditions set forth in paragraph 5.1, dry, and measured at such time and through the use of such method as may be mutually agreeable to the parties hereto.

Article VI

Measuring Equipment

6.1 The delivering party at its sole cost and expense shall install, maintain and operate or cause to be installed, maintained and operated, at the Receipt Points and Delivery Points enumerated in Article I, a standard type orifice meter or meters for the measuring of the quantity of gas delivered herein. Orifice meters shall be installed and [fol. 241] operated in accordance with the specifications prescribed in Gas Measurement Committee Report No. 3, dated April 1955, including the Appendix thereto, of the Natural Gas Department of the American Gas Association.

6.2 Once each month the accuracy of the measuring equipment shall be verified by and at the expense of the party operating the meters in the presence of the other party's representative and both parties shall jointly observe any adjustments which are made in such measuring

equipment. If either party at any time shall notify the other that it desires a special test of any meter, the other party shall cooperate to secure an immediate verification of the accuracy of such meter and joint observation of any adjustments. The party operating the meters shall give the other party notice of all tests in order that such other party may conveniently have its representative present.

6.3 The charts at all points of delivery shall be changed daily or every eight (8) days, as may be agreed upon by the parties hereto. Upon request the charts used in the calculations shall be sent to the other party subject to such charts being returned within thirty (30) days after receipt. The respective meters, meter readings, and meter charts shall be accessible at all reasonable times to inspection and examination by either party.

6.4 If upon any test the percentage of inaccuracy shall be two per cent (2%) or more, the registration of such meter shall be corrected at the rate of such inaccuracy for any period which is definitely known or agreed upon, but in case the period is not definitely known or agreed upon, then for a period extending back one-half (½) of the time [fol. 242] elapsed since the date of last calibration. Following any test, metering equipment found inaccurate shall be immediately restored by the delivering party as closely as possible to a condition of accuracy. If, for any reason, any meter is out of service and/or out of repair so that the amount of natural gas delivered cannot be estimated or computed from the reading thereof, the amount of natural gas delivered during the period such meter is out of service and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, in the following order:

(a) By using the registration of the receiving party's check meter, if installed and accurately registering.

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.

(c) By estimating the volume of delivery, by using as a basis the volumes delivered during preceding periods under similar conditions when the meter was registering accurately.

6.5 The receiving party, at its option and expense, may install and operate check meters to check the delivering party's meters, but measurement of gas for the purpose of this agreement shall be by the delivering party's meter, except as hereinabove specifically provided to the contrary.

6.6 The party operating any meters in accordance with 6.3 shall cause to be preserved for a period of at least six (6) years all test data, charts and other records of gas measurement for such meters.

Article VII

Drips and Separators, Liquid Extraction

7.1 Mountain Feul shall install drips and conventional [fol. 243] separators to separate crude oil, liquid hydrocarbons and/or water in its liquid state from the gas so that such oil, liquid hydrocarbons and/or water in its liquid state may be kept from entering Pacific's pipeline. All oil and liquid hydrocarbons so separated shall remain the property of Mountain Fuel.

7.2. Pacific shall have the right to process, or to have processed, for the extraction of liquid hydrocarbons all exchange gas delivered to it by Mountain Fuel hereunder, and shall be entitled to retain all products so extracted or to dispose of same and to retain all proceeds received therefrom.

Article VIII

Responsibility for and Ownership of Gas

8.1 *Ownership of Gas.*

As between the parties to this agreement, each party shall be deemed to have title to and be in control and possession of all gas in that party's facilities.

8.2 *Responsibility.*

The receiving party shall have no responsibility with respect to any gas deliverable under this agreement until it is received into its facilities or on account of anything which may be done, happen or arise with respect to such gas before such delivery and receipt, and the delivering party shall have no responsibility with respect to such gas after its delivery into the facilities of the other party on or account of anything which may be done, happen or arise with respect to such gas after such delivery.

[fol. 244]

Article IX

Warranty and Title of Gas

Each party warrants the title to all gas delivered to the other hereunder and its right to sell or exchange the same, and agrees to indemnify and hold the other party harmless of and from all liens and adverse claims.

Article X

Force Majeure

10.1 Neither party hereto, except for the obligation to make money payments hereunder, shall be liable for any failure to perform the terms of this agreement when such failure is due to "force majeure" as hereinafter defined. The term "force majeure" as employed in this agreement shall mean acts of God, strikes, industrial disturbances, civil disturbances, arrests and restraint from rulers of people, interruptions by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, inability to secure labor or materials, including inability to secure materials as a result of allocations promulgated by authorized governmental agencies, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or ac-

cident to machinery or lines of pipe, freezing of wells or pipelines, partial or entire failure of gas supply, or any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party [fol. 245] claiming force majeure. Nothing herein contained, however, shall be construed to require either party to settle a labor dispute against its will.

10.2 It is understood that either party may, without liability to the other party, interrupt or curtail the operations of its system for the purpose of making necessary alterations or repairs thereto, but that such interruptions or curtailments shall be for only such time as may be reasonable. The party interrupting or curtailing operations shall give the other party reasonable notice, except in case of emergency, of its intention so to interrupt or curtail operations and of the estimated time during which no gas or only a reduced amount of gas will be taken or delivered, as the case may be.

Article XI

Taxes

11.1 Each party hereto shall pay or cause to be paid all taxes and assessments imposed upon that party with respect to gas in that party's facilities. Neither party shall be responsible or liable for any taxes or other statutory charges levied or assessed against any of the facilities of the other party used for the purpose of carrying out the provisions of this agreement.

Article XII

Governmental Regulation

12.1 It is agreed that either party hereto shall have the [fol. 246] right to initiate proceedings with the Federal Power Commission in accordance with Section 4 of the Natural Gas Act for agreed changes in charges payable hereunder, and in accordance with Section 5 of the Natural

Gas Act for any unilateral changes in charges payable hereunder. Mountain Fuel shall have the right to protest any such changes in rates and new rates or rate schedules before said Commission, and to exercise any other rights it may have with respect thereto. Provided, that if at any time it shall be finally judicially determined that unilateral changes in rates and/or other contract provisions may be legally filed and made effective pursuant to Section 4 of the Natural Gas Act, then either party hereto may proceed in accordance with such judicial determination.

12.2 In the event any higher rate charged by Pacific is more than one hundred ten per cent (110%) of the price specified in Article IV hereof, Mountain Fuel shall have the right to cancel this contract in accordance with the following procedure: Mountain Fuel shall give written notice to Pacific of its intent so to cancel this contract, such notice to specify the effective date of such cancellation, which effective date shall be at least sixty (60) days after the date of notice by Mountain Fuel to Pacific.

Article XIII

Certificate Authorizations

13.1 Each party shall diligently prosecute and promptly file an application with the Federal Power Commission for such authority as may be necessary to exchange the quantity of natural gas provided for herein, and upon comple- [fol. 247] tion of the facilities authorized by the Federal Power Commission, in a certicate in form not unsatisfactory to the recipient thereof, the parties hereto shall promptly commence the exchange of natural gas. In the event the parties have not received all requisite authority from the Federal Power Commission within six (6) months from the date hereof prior to the issuance of said certificate, either party may cancel this agreement upon thirty (30) days' prior written notice to the other party.

13.2 It is understood and agreed by and between the parties hereto that deliveries of natural gas by Mountain

Fuel to Pacific hereunder may be commenced and continued only in the event Pacific has excess capacity in its Big Piney lateral facilities sufficient to accommodate such deliveries. Such excess capacity will exist consequent upon Pacific's construction and operation of a projected 30-inch loop of its existing Big Piney lateral line and effectiveness of this Agreement is therefore expressly contingent upon the construction and operation of such loop. It is further understood and agreed that said construction and operation by Pacific can only be accomplished pursuant to authority of the Federal Power Commission and that Pacific has filed an Application at Docket No. G-14561 with such Commission requesting authority to construct, maintain and operate such loop line. In connection with such Application, it is hereby agreed that Pacific shall prosecute such application diligently in order that the authority requested therein may be secured at the earliest possible date; provided, however, that Pacific shall not be obligated to accept such Certificate issued at Docket No. G-14561 if such Certificate is issued subject to conditions which Pacific, in its sole judgment, regards as unsatisfactory; and provided, further, that con- [fol. 248] struction and operation by Pacific of the said Big Piney loop line pursuant to temporary authorization granted by the Federal Power Commission will not necessarily constitute satisfactory certification within the contemplation of this Paragraph 13.2 and notwithstanding operation of such loop line by Pacific, Pacific reserves the right to discontinue such operation without liability to Mountain Fuel hereunder in the event permanent certificate of such construction and operation is not granted by the Federal Power Commission under the terms and conditions hereunder satisfactory to Pacific.

Article XIV

Assignments

Neither party hereto shall assign this agreement or any of its rights or obligations hereunder without the consent

in writing of the other party; provided, that either party may, without such consent, assign this agreement and all of its rights and obligations hereunder to any wholly-owned subsidiary or parent company or any successor to all of its property, subject to approval of appropriate regulatory authority. Notwithstanding the foregoing, either Mountain Fuel or Pacific, or both, may assign its right, title and interest in, to and by virtue of this agreement, including any and all extensions, renewals, amendments, and supplements thereto, to a trustee or trustees, individual or corporate, as security for bonds or other obligations or securities, without such trustee or trustees assuming or becoming in any respect obligated to perform any of the obligations of the assignor and, if any such trustee be a corporation, without its being required by the parties hereto to qualify to do business in the state in which the performance of this agreement may occur.

[fol. 249]

ARTICLE XV

Term

Subject to the obtaining by the parties, respectively, of any necessary authorizations or consents of governmental regulatory agencies, this agreement shall be effective from the date hereof and except as provided in paragraph 12.2 shall remain in full force and effect for a period of three (3) years from and after October 1, 1958, and thereafter until termination. This contract may be terminated by either party upon twelve (12) months' written notice to the other party, but such notice may not be given prior to September 30, 1960.

ARTICLE XVI

Advance

When the construction of the meter station near Compressor Station No. 7 is required by Mountain Fuel, in order to assist Pacific in completing the installation of

this meter station as contemplated by this agreement, Mountain Fuel hereby agrees to advance to Pacific the cost of such construction not to exceed thirty thousand dollars ($30,000.00), without interest. Pacific will repay the amount of money so advanced by Mountain Fuel hereunder by payment each and every month thereafter of a sum of two cents (2¢) per each one thousand (1000) cubic feet of gas exchanged during the preceding month by Mountain Fuel and Pacific until all sums advanced by Mountain Fuel hereunder have been repaid by Pacific.

[fol. 250] ARTICLE XVII

Miscellaneous

17.1 *Default.*

In the event of a breach of any of the provisions of this agreement by Pacific or Mountain Fuel, the other party may at its option terminate this agreement by proceeding as follows: The party not in default shall cause a written notice to be served on the party in default, stating specifically the cause for terminating this agreement and declaring it to be the intention of the party giving the notice to terminate the same; whereupon, the party in default shall have sixty (60) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating this agreement, and if within said period of sixty (60) days the party in default removes and remedies said cause or causes and fully indemnifies the party not in default for any and all consequences of such breach, then such notice shall be null and void and this agreement shall continue in full force and effect. In case the party in default does not so remedy or remove the cause or causes and does not indemnify the party giving the notice for any and all consequences of such breach within said period of sixty (60) days, then this agreement

shall become null and void from and after the expiration of such period. Any cancellation of this agreement pursuant to the provisions of this paragraph shall be without prejudice to the right of Mountain Fuel to receive equivalent volumes of gas, and without prejudice to the right of Pacific to collect any amounts then due to it for exchange [fol. 251] service rendered to Mountain Fuel prior to the time of cancellation, and without waiver of any remedy to which the party not in default may be entitled for violations of this agreement.

17.2 *Non-Waiver of Future Default*

No waiver by either party of any one or more defaults by the other in the performance of any of the provisions of this agreement shall operate or be construed as a waiver of any other or future default or defaults, whether of a like or of a different character.

17.3 *Notices*

Except as herein otherwise provided, any notice, request, demand, statement or bill provided for in this agreement, or any notice which either party may desire to give to the other, shall be in writing and shall be considered as fully delivered when mailed by registered or certified return-receipt mail to the post office address of the parties hereto, as the case may be, as follows:

Pacific Northwest Pipeline Corporation	Mountain Fuel Supply Company
P. O. Box 1526	P. O. Box 989
Salt Lake City 10, Utah	Salt Lake City 10, Utah

or at such other address as either party shall designate by formal written notice. Routine communications, including monthly statements and payments, shall be considered as duly received when mailed by ordinary mail.

17.4 *Compliance with Laws*

This agreement and the respective obligations of the parties hereto are subject to present and future valid laws and valid orders, rules and regulations of duly constituted authorities having jurisdiction.

[fol. 252] 17.5 *Topical Headings.*

The topical headings used herein are inserted for convenience only, and shall not be construed as having any substantive significance or meaning whatsoever or as indicating that all of the provisions of this agreement relating to any particular topic are to be found in any particular Article.

In Witness Whereof, this agreement is executed in quadruplicate, each of which shall be deemed an original, all as of the day and year first above written.

Pacific Northwest Pipeline Corporation

By /s/ Stuart F. Silloway
President

Attest:

/s/ G. Scott Cuming
Assistant Secretary

Mountain Fuel Supply Company

By /s/ W. T. Nightingale
President

Attest:

/s/ L. C. Olpin

[fol. 253]

EXHIBIT 2 TO MEMORANDUM

MOUNTAIN FUEL SUPPLY COMPANY
FPC Gas Tariff
Original Volume No. 1 Original Sheet No. 26

Rate Schedule X-2

Agreement Between

Pacific Northwest Pipeline Corporation

and

Mountain Fuel Supply Company

Dated

December 6, 1958

Issued by: W. T. Nightingale
Issued on: July 30, 1959 Effective Aug. 1, 1959

[fol. 254] BIG PINEY-LABARGE AREA GATHERING AGREEMENT

THIS AGREEMENT, made and entered into at Salt Lake City, Utah, this 6th day of December, 1958, by and between MOUNTAIN FUEL SUPPLY COMPANY ("Mountain Fuel") and PACIFIC NORTHWEST PIPELINE CORPORATION ("Pacific"),—

WITNESSETH

WHEREAS, both Mountain Fuel and Pacific own and control gas reserves in the Big Piney-LaBarge Area, Sublette and Lincoln counties, Wyoming, and in areas contiguous thereto; and

WHEREAS, in order to avoid duplicate connections to the same wells, unnecessary duplication of other facilities, and in order to accomplish maximum utilization of existing and future facilities, the parties hereto desire to cooperate in the gathering of certain volumes of natural gas;

Now, Therefore, in consideration of these premises, the mutual covenants and agreements herein below set out, Mountain Fuel and Pacific agree and contract to gather gas for each other upon the following terms and conditions.

Article I

Gas to be Gathered.

1.1 Within the Big Piney-LaBarge area, Pacific and Mountain Fuel expect to take delivery of gas from wells located in close proximity to each other's gathering systems. Pacific and Mountain Fuel also expect to own working interests or purchase rights in "Unit" areas in which the other party has the ownership, working interest, or purchase [fol. 255] rights. To avoid the duplication of facilities, each party agrees to receive the other party's gas into its gathering systems and to deliver to such other party equal volumes of gas at agreed points of delivery. The points at which Pacific will receive gas from Mountain Fuel for gathering are listed in Exhibit A. The points at which Mountain Fuel will receive gas from Pacific for gathering are listed in Exhibit B. It is intended that additional points of receipt may be added to either exhibit by letter of agreement.

1.2 Nothing in this agreement is to be construed as requiring Pacific or Mountain Fuel to extend their gathering systems for the sole purpose of receiving gas from the other party.

1.3 Neither party shall be required to alter the pressure on its gathering system or to supply compression in order to receive gas from the other party.

1.4 In order that Pacific and Mountain Fuel each may accurately foresee which wells may be tied into the other's system, or when either party may deliver its share of gas from a "Unit" or a particular well into the other system, each party agrees to keep the other informed at all times of its contemplated construction program for gathering facilities.

Article II

Volumes of Gas to be Gathered

2.1 In order that each party hereto may make preliminary determinations of gas available to its system, each party shall furnish to the other a copy of its estimated production for each calendar year. The estimate shall be pro- [fol. 256] vided not less than thirty days prior to the commencement of gathering service hereunder for the year in which such service is commenced, and not less than thirty days prior to the commencement of each succeeding calendar year.

Article III.

Points of Delivery and Balancing of Deliveries

3.1 Gas gathered under this agreement shall be considered as being delivered concurrently to the other party at points of interconnection of Mountain Fuel's gathering system and Pacific's Big Piney 16-inch and 30-inch lateral lines, such points being hereinafter referred to as "Delivery Points".

3.2 For the purpose of determining the net volume of gas gathered, the gathering deliveries of each party shall be totaled each month and the difference in totals shall be the net gas gathered.

3.3 So long as the heat content of the gas gathered is within the limits specified in Article V, the B.t.u. of the net gas gathered will be considered to be equal to the B.t.u. of all gas delivered by Mountain Fuel to Pacific at the delivery points.

Article IV

Price, Billing and Payment

4.1 Each party agrees to pay the other party one and one-half (1½¢) cents per each one thousand (1000) cubic feet of net gas gathered by the other party.

[fol. 257] 4.2 On or before the 10th day of each calendar month, each party shall furnish the other party a statement reflecting the total amount and B.t.u. content of the gas received for gathering in the previous calendar month. On or before the 15th day of the calendar month, Pacific shall submit to Mountain Fuel a statement of gathering service rendered during the preceding calendar month showing the volume of gas gathered, the B.t.u. content of the gas, the net volume gathered and the charges for the service.

4.3 On or before the 25th day of each month, the party for whom the net gas is gathered shall make payment of the gathering charge rendered for the preceding calendar month.

4.4 Each of the parties hereto shall have the right to examine at reasonable times books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to the provisions hereof.

Article V

Quality

5.1 All gas subject to this agreement shall have a heat value of not less than nine hundred and eighty five (985) B.t.u. per cubic foot and either party may refuse to accept from the other gas having a lower heating value.

5.2 The gas hereunder shall be merchantable natural gas and shall not contain more than one-quarter (¼) grain of hydrogen sulphide nor more than twenty (20) grains of organic sulphur per one hundred cubic feet and not more [fol. 258] than five per cent (5%) by volume of carbon dioxide.

5.3 Gas subject to this agreement shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered and in no event have a water content in excess of seven (7) pounds per one million cubic feet (1000 MCF), unless wholly or partially exempted by letter agreement.

Article VI

Measurement

6.1 *Unit of Volume.*

The unit of volume of gas for all purposes hereunder (except for computation of heating value) shall be one (1) cubic foot at an absolute pressure of fifteen and twenty-five thousandths (15.025 pounds per square inch at a temperature of sixty degrees Fahrenheit (60°F.).

6.2 *Determination of Volume.*

The volumes of gas delivered hereunder shall be computed in accordance with the methods prescribed in Gas Measurement Committee Report No. 3, Natural Gas Department, American Gas Association, including the Appendix thereto, dated April 1955, including proper correction for deviation from Boyle's Law.

6.3 *Specific Gravity.*

The specific gravity of the natural gas shall be determined by the party operating the meter at agreed periods (joint tests if desired by either party) by means of an Edwards-type balance or by such other methods as may be agreed upon in writing by the parties hereto.

[fol. 259] 6.4 *Flowing Temperatures.* The flowing temperature of the gas in the meters shall be determined by means of a recording thermometer to be installed in accordance with the recommendations contained in the said gas Measurement Report No. 3, and the arithmetic average temperature each day shall be used in computing the deliveries of gas during such day.

6.5 *Assumed Atmospheric Pressure.* The average absolute atmospheric pressure at each delivery point and receipt point hereunder shall be determined by the parties

on the basis of the application of Table X of the C.N.G.A. Bulletin TS 561 (effective April 1, 1956) to the actual elevation of such delivery point or receipt point and such determination shall govern, irrespective of variations in such atmospheric pressure from time to time.

6.6 *Heating Value.* The heating value of gas hereunder shall be determined on the basis of a standard cubic foot at an absolute pressure of fourteen and seventy-three hundredths (14.73) psia at a temperature of sixty degrees Fahrenheit (60°F), dry, and measured at such time and through the use of such method as may be mutually agreeable to the parties hereto. The heating value of gas from each point of receipt or delivery shall be deemed to be that of the last test obtained at any such point.

Article VII

Measuring Equipment

7.1 The delivering party at its sole cost and expense shall install, maintain and operate or cause to be installed, maintained and operated at the receipt points enumerated in Exhibits A and B a standard type orifice meter or meters for the measuring of the quantity of gas delivered herein. [fol. 260] Orifice meters shall be installed and operated in accordance with the specifications prescribed in Gas Measurement Committee Report No. 3, dated April 1955, including the Appendix thereto, of the Natural Gas Department of the American Gas Association.

7.2 Once each month the accuracy of the measuring equipment shall be verified by and at the expense of the party operating the meters and the other party may observe any adjustments which are made in such measuring equipment. If either party at any time shall notify the other that it desires a special test of any meter, the other party shall cooperate to secure an immediate verification of the accuracy of such meter and joint observation of any adjustments. The party operating the meters shall give the

other party notice of all tests in order that such other party may conveniently have its representative present.

7.3 The charts at all receipt points shall be changed daily or every eight (8) days, as may be agreed upon by the parties hereto. Upon request the charts used in the calculations shall be sent to the other party subject to such charts being returned within thirty (30) days after receipt. The respective meters, meter readings, and meter charts shall be accessible at all reasonable times to inspection and examination by either party.

7.4 If upon any test the percentage of inaccuracy shall be two per cent (2%) or more, the registration of such meter shall be corrected at the rate of such inaccuracy for any period which is definitely known or agreed upon, but in [fol. 261] case the period is not definitely known or agreed upon, then for a period extending back one-half (½) of the time elapsed since the date of last calibration. Following any test, metering equipment found inaccurate shall be immediately restored by the delivering party as closely as possible to a condition of accuracy. If, for any reason, any meter is out of service and/or out of repair so that the amount of natural gas delivered can not be estimated or computed from the reading thereof, the amount of natural gas delivered during the period such meter is out of service and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, in the following order:

(a) By using the registration of the receiving party's check meter, if installed and accurately registering.

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.

(c) By estimating the volume of delivery, by using as a basis the volumes delivered during preceding periods under similar conditions when the meter was registering accurately.

Article VIII

Responsibility for Gas

8.1 The receiving party shall have no responsibility with [fol. 262] respect to any gas deliverable under this agreement until it is received into its facilities or on account of anything which may be done, happen or arise with respect to such gas before such delivery and receipt, and the delivering party shall have no responsibility with respect to such gas after its delivery into the facilities of the other party on account of anything which may be done, happen or arise with respect to such gas after such delivery.

Article IX

Indemnification

9.1 Each party agrees to indemnify and hold the other party harmless of and from all liens and adverse claims on that party's gas.

Article X

Force Majeure

10.1 Neither party hereto shall be liable for any failure to perform the terms of this agreement when such failure is due to "force majeure" as hereinafter defined. The term "force majeure" as employed in this agreement shall mean acts of God, strikes, industrial disturbances, civil disturbances, arrests and restraint from rulers of people, interruptions by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, inability to secure labor or materials, epi- [fol. 263] demics, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or pipelines, partial or entire failure of gas supply, or any other cause, whether of the kind herein enumerated or otherwise, not

reasonably within the control of the party claiming force majeure. Nothing herein contained, however, shall be construed to require either party to settle a labor dispute against its will.

10.2 It is understood that either party may, without liability to the other party, interrupt or curtail the operations of its system for the purpose of making necessary alterations or repairs thereto, but that such interruptions or curtailments shall be for only such time as may be reasonable. The party interrupting or curtailing operations shall give the other party reasonable notice, except in case of emergency, of its intention so to interrupt or curtail operations and of the estimated time during which no gas or only a reduced amount of gas will be taken or delivered, as the case may be.

Article XI

Taxes

11.1 Each party hereto shall pay or cause to be paid all taxes and assessments imposed upon that party's gas when in the other party's facilities or upon the transportation thereof by the other party. Neither party shall be responsible or liable for any taxes or other statutory charges [fol. 264] levied or assessed against any of the facilities of the other party used for the purpose of carrying out the provisions of this agreement.

Article XII

Certificate Authorizations

12.1 Each party shall diligently prosecute and promptly file an application with the Federal Power Commission for such authority as may be necessary to gather the quantity of natural gas provided for herein, and upon completion of the facilities authorized by the Federal Power Commission, in a certificate in form not unsatisfactory to the recipient thereof, the parties hereto shall promptly commence

the gathering of natural gas under this agreement. In the event the parties have not received all requisite authority from the Federal Power Commission within six (6) months from the date hereof prior to the issuance of said certificate, either party may cancel this agreement upon thirty (30) days' prior written notice to the other party.

Article XIII

Assignments

13.1 Neither party hereto shall assign this agreement or any of its rights or obligations hereunder without the consent in writing of the other party; provided, that either party may, without such consent, assign this agreement and all of its rights and obligations hereunder to any wholly-owned subsidiary or parent company or any successor to all of its property, subject to approval of appropriate regulatory authority. Notwithstanding the foregoing, either Mountain Fuel or Pacific, or both, may assign its right, [fol. 265] title and interest in, to and by virtue of this agreement, including any and all extensions, renewals, amendments, and supplements thereto, to a trustee or trustees, individual or corporate, as security for bonds or other obligations or securities, without such trustee or trustees assuming or becoming in any respect obligated to perform any of the obligations of the assignor and, if any such trustee be a corporation, without its being required by the parties hereto to qualify to do business in the state in which the performance of this agreement may occur.

Article XIV

Term

14.1 Subject to the obtaining by the parties, respectively, of any necessary authorizations or consents of governmental regulatory agencies, this agreement shall be effective from the date hereof and shall remain in full force and effect for a period of three (3) years from and after October 1,

1958, and thereafter until termination. This contract may be terminated by either party upon twelve (12) months' written notice to the other party, but such notice may not be given prior to September 30, 1960.

Article XV

Miscellaneous

15.1 *Default*

In the event of a breach of any of the provisions of this agreement by Pacific or Mountain Fuel, the other party may [fol. 266] at its option terminate this agreement by proceeding as follows: The party not in default shall cause a written notice to be served on the party in default, stating specifically the cause for terminating this agreement and declaring it to be the intention of the party giving the notice to terminate the same; whereupon, the party in default shall have sixty (60) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating this agreement, and if within said period of sixty (60) days the party in default removes and remedies said cause or causes and fully indemnifies the party not in default for any and all consequences of such breach, then such notice shall be null and void and this agreement shall continue in full force and effect. In case the party in default does not remedy or remove the cause or causes and does not indemnify the party giving the notice for any and all consequences of such breach within said period of sixty (60) days, then this agreement shall become null and void from and after the expiration of such period. Any cancellation of this agreement pursuant to the provisions of this paragraph shall be without prejudice to the right of either party to receive gas or amounts then due to it under the terms of this agreement and without waiver of any remedy to which the party not in default may be entitled for violations of this agreement.

15.2 *Non-Waiver of Future Default.*

No waiver by either party of any one or more defaults by the other in the performance of any of the provisions [fol. 267] of this agreement shall operate or be construed as a waiver of any other or future default or defaults, whether of a like or of a different character.

15.3 *Notices*

Except as herein otherwise provided, any notice, request demand, statement or bill provided for in this agreement, or any notice which either party may desire to give to the other shall be in writing and shall be considered as fully delivered when mailed, return receipt requested, by registered or certified mail to the post office address of the parties hereto, as the case may be, as follows:

Pacific Northwest Pipeline Corporation
P. O. Box 1526
Salt Lake City 10, Utah

Mountain Fuel Supply Company
P. O. Box 989
Salt Lake City 10, Utah

or at such other address as either party shall designate by formal written notice. Routine communications, including notices and requests for tests, monthly statements and payments, shall be considered as duly received when mailed by ordinary mail.

15.4 *Compliance with Laws.*

This agreement and the respective obligations of the parites hereto are subject to present and future valid laws and valid orders, rules and regulations of duly constituted authorities having jurisdiction.

15.5 *Topical Headings.*

The topical headings used herein are inserted for convenience only and shall not be construed as having any substantive significance or meaning whatsoever or as indicating that all of the provisions of this agreement relating to any particular topic are to be found in any particular Article.

[fol. 268] In Witness Whereof, this agreement is executed in quadruplicate, each of which shall be deemed an original, all as of the day and year first above written.

Pacific Northwest Pipeline Corporation

By /s/ Allen B. Hiatt
Vice President

Attest:

/s/ G. Scott Cuming
Assistant Secretary

Mountain Fuel Supply Company

By /s/ W. T. Nightingale
President

Attest:

/s/ B. M. Kastler, Jr.
Secretary

[fol. 269] Exhibit "A"

Attached to and made a part of the Big Piney-LaBarge area Gathering Agreement dated December 6, 1958 by and between MOUNTAIN FUEL SUPPLY COMPANY ("Mountain Fuel") and PACIFIC NORTHWEST PIPELINE CORPORATION ("Pacific").

Pacific agrees to accept into its gathering system the volumes of gas allocated to Mountain Fuel from the following wells:

Well No.		*Well Location*						
		Sec.	Tn.	Rn.	Feet From N Line	Feet From S Line	Feet From E Line	Feet From W Line
North LaBarge Area								
BNG	15	32	28N	113W		2208	821	
BNG	16	5	27N	113W	514		769	
BNG	17	5	27N	113W		660	678	
BNG	18	17	27N	113W	2162		2488	
BNG	19	8	27N	113W		1520		1320
BNG	21	20	27N	113W	1320		1300	
BNG	22	5	27N	113W		815		1320
BNG	25	9	27N	113W		840		2659
BNG	26	21	27N	113W	200		1320	
BNG	27	4	27N	113W		660		2679
BNG	28	33	28N	113W		1320	20	
BNG	29	33	28N	113W	1340		1340	
BNG	5-8	8	27N	113W		360	990	

Effective Date: *December 6, 1958*

PACIFIC NORTHWEST PIPELINE CORPORATION

By /s/ ALLEN B. HIATT

Date January 5, 1959

MOUNTAIN FUEL SUPPLY COMPANY

By /s/ M. M. FIDLAR

Date January 5, 1959

[fol. 270] Exhibit "B"

Attached to and made a part of the Big Piney-LaBarge area Gathering Agreement dated December 6, 1958 by and between MOUNTAIN FUEL SUPPLY COMPANY ("Mountain Fuel") and PACIFIC NORTHWEST PIPELINE CORPORATION ("Pacific").

Mountain Fuel agrees to accept into its gathering system the volumes of gas allocated to Pacific from the following wells:

Well No.	*Well Location*						
	Sec.	Tn.	Rn.	Feet From N Line	Feet From S Line	Feet From E Line	Feet From W Line
Dry Piney							
Unit No. 1	14	27N	114W		660		660
Unit No. 3	4	27N	114W		1101		660
Unit No. 5	2	27N	114W		1156	1329	

Effective Date: *December 6, 1958*

PACIFIC NORTHWEST PIPELINE CORPORATION

By /s/ ALLEN B. HIATT

Date January 5, 1959

MOUNTAIN FUEL SUPPLY COMPANY

By /s/ M. M. FIDLAR

Date January 5, 1959

[fol. 271] EXHIBIT 3 TO MEMORANDUM

SERVICE AGREEMENT

Between

PACIFIC NORTHWEST PIPELINE CORPORATION

and

MOUNTAIN FUEL SUPPLY COMPANY

Near Green River, Wyoming

(Firm Service)

Dated

May 5, 1956

PNW Contract No. 499

[fol. 272]

SERVICE AGREEMENT

(Firm Service)

THIS AGREEMENT, made and entered into this 5th day of May, 1956, by and between PACIFIC NORTHWEST PIPELINE CORPORATION, a Delaware corporation, hereinafter called "Seller", and MOUNTAIN FUEL SUPPLY COMPANY, a Utah corporation, hereinafter called "Buyer".

In consideration of the mutual covenants and agreements as herein set forth, the parties hereto agree as follows:

ARTICLE I—GAS TO BE SOLD AND PURCHASED

Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, the following quantities of natural gas:

A minimum average daily quantity of 50,000 Mcf computed annually. The Contract Demand shall be 58,750 Mcf per day.

ARTICLE II—DELIVERY POINTS AND PRESSURES

Delivery of natural gas by Seller to Buyer shall be at or near the location described below:

A point where Seller's main line crosses Buyer's main line west of Green River, Wyoming.

Gas shall be delivered by Seller to Buyer at such pressures at the above-specified point of delivery as may be required by Buyer up to 600 pounds per square inch gauge.

[fol. 276]

ARTICLE III—APPLICABLE RATE SCHEDULE

Buyer agrees to pay Seller for all natural gas service rendered under the terms of this Agreement in accordance with Seller's Rate Schedule PL-1 as filed with the Federal Power Commission, and as such Rate Schedule may be amended or superseded from time to time. This Agreement shall be subject to the provisions of such Rate Schedule and the General Terms and Conditions applicable thereto on file with the Federal Power Commission and effective from time to time, which by this reference are incorporated herein and made a part hereof.

ARTICLE IV—TERM OF AGREEMENT

This Agreement shall become effective on the date hereof, provided that the terms of payment and delivery under this Agreement shall become effective on the date of initial delivery hereunder by Seller to Buyer, which date of initial delivery shall be the date specified in a written notice, given by Seller to Buyer, stating the date upon which Seller is prepared to deliver gas to Buyer, and shall continue in effect for a period extending until twenty (20) years from such date of initial delivery, and from year to year thereafter until cancelled by either Seller or Buyer by twelve (12) months' notice given to the other in writing before the termination of the twentieth (20th) year or any subsequent year, specifying the termination date.

ARTICLE V—CANCELLATION OF PRIOR AGREEMENTS

When this Agreement takes effect, it supersedes, cancels and terminates the following Agreement:

NONE

[fol. 274]

ARTICLE VI—SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above set forth.

PACIFIC NORTHWEST PIPELINE CORPORATION
"Seller"

By Allen B. Hiatt
Vice President

Attest: C. C. Rogers
Assistant Secretary

[SEAL]

MOUNTAIN FUEL SUPPLY COMPANY
"Buyer"

By W. T. Nightingale
President

Attest: L. C. Olpin
Secretary

[SEAL]

[fol. 275]

EL PASO NATURAL GAS COMPANY
FPC Gas Tariff, Original Volume No. 3
Original Sheet No. 4

RATE SCHEDULE PL-1

Pipe Line Service

Wyoming

1. *AVAILABILITY*

This rate schedule is available to any pipe line company (hereinafter called "Buyer"), taking service in southwestern Wyoming, for the purchase of natural gas from El Paso Natural Gas Company (hereinafter called "Seller"), when Buyer and Seller have executed a service agreement for the purchase of natural gas under this rate schedule.

2. *APPLICABILITY AND CHARACTER OF SERVICE*

This rate schedule shall apply to all gas delivered by Seller to Buyer on a firm basis. Service rendered to Buyer under this rate schedule, up to the Contract Demand, shall be firm and shall not be subject to curtailment or interruption except as provided in Section 7 of the General Terms and Conditions.

Issued by: Paul Kayser, President
Issued on: December 24, 1959

Effective: January 1, 1960

Issued to comply with order of the Federal Power Commission, Docket No. G-13019, dated December 23, 1959.

3. *RATE*

Demand Charge:	$2.62 per month per Mcf of Contract Demand
Commodity Charge:	16.9¢ per Mcf.

4. *MINIMUM BILL*

4.1 *Amount of Minimum Bill*—The minimum bill shall be on an annual basis and, except as provided in subsection 4.4 below, shall be applicable for each calendar year beginning with the first January 1 following the initiation of service by Seller to Buyer.

The minimum annual bill shall consist of the sum of:

(a) The total monthly demand charges during such year, and

(b) An amount computed by multiplying the minimum average daily quantity by the number of days during the year, and multiplying the volume so obtained by the commodity charge set forth in the rate contained in Section 3 of this rate schedule.

4.2 *Method of Payment*—If during any calendar year the payments otherwise made by Buyer to Seller for service under this rate schedule are less than the annual minimum bill set forth in subsection 4.1 above, Seller shall render a bill to Buyer for such additional amounts payable by reason of the annual minimum bill together with the bill for deliveries during December, and Buyer shall make [fol. 276] payment therefor with its payment of the bill for such December deliveries.

In order to reduce the magnitude of any such payment due at the end of a calendar year, Seller

shall bill Buyer each month for a minimum amount equal to the sum of:

(a) The demand charge for the month, and

(b) An amount computed by multiplying the commodity charge in the above rate by the product of 75% of the minimum average daily quantity and the number of days in the month.

4.3 *Make-up Deliveries*

(a) In the event Buyer pays under this minimum bill section for volumes of gas not taken by it during any such calendar year, Buyer may take such additional volume paid for but not taken, free of further cost to it, during the four calendar years following the year in which it failed to take such volume, provided it takes the gas at a rate within its Contract Demand requirements hereunder unless deliveries are made in excess of the Contract Demand, as provided under subsection 4.3(b) hereof; and, provided further, all make-up gas shall be taken within the term of the Executed Service Agreement. For purposes of make-up, only gas in excess of the minimum average daily quantity computed annually shall be considered as make-up gas.

(b) At such time or times as Seller may determine it has gas available for such purpose, Seller will, if Buyer so wishes, make deliveries to Buyer in volumes exceeding Buyer's Contract Demand up to 150% of such Contract Demand; provided, that such deliveries will be made only when Buyer has paid Seller for gas not then taken in accordance with provisions of this Rate Schedule. When Seller has a volume of gas available for delivery to Buyer under this subsection 4.3(b), Seller's gas

dispatcher will so advise the gas dispatcher of Buyer and such dispatchers will arrange for delivery thereof, wholly or in part, to Buyer, provided that such delivery shall be interruptible by Seller without prior notice thereof to Buyer. Gas at any time made available for delivery to Buyer [fol. 277] under this subsection shall be a volume proportionate to the total volumes then similarly made available to all Buyers qualified to take deliveries under this subsection and who wish to do so which is equal in ratio to the proportion the Contract Demand of Buyer bears to the aggregate Contract Demands of such Buyers.

4.4 *Partial Year Minimum Bill*—For the partial year prior to the commencement of the first calendar year described in subsection 4.1 above, the minimum bill shall equal the sum of:

(a) The demand charges payable during such partial year, and

(b) A minimum commodity charge computed by multiplying the commodity charge in the above rate by a minimum volume equal to the product of the minimum average daily quantity and the number of days in such partial year,

Such partial year minimum bill shall be subject to the same method of payment, and right of the Buyer to make-up volumes paid for but not taken, as set forth in subsections 4.2 and 4.3 above.

5. *CONTRACT DEMAND*

The Contract Demand shall be the largest volume of gas Seller is obligated to deliver to Buyer, and Buyer is entitled to receive from Seller on any one day, and shall be specified in the executed service agreement between Seller and Buyer.

6. *MINIMUM AVERAGE DAILY QUANTITY*

The minimum average daily quantity shall be specified in the executed service agreement.

[fol. 278]

7. *DEMAND CHARGE AND MINIMUM BILL ADJUSTMENT*

If, during any day, Seller fails to deliver to Buyer the volume of natural gas requested by Buyer up to the Contract Demand, the demand charge otherwise payable during the month in which such day occurs shall be reduced by an amount computed by multiplying the volume Seller failed to deliver to Buyer on such day by 8.62¢ per Mcf.

The minimum annual bill for a year in which such failure or failures occur shall be reduced by an amount equal to the quantity Seller failed to deliver on such day or days during the year multiplied by 16.9¢ per Mcf, in addition to the demand charge reductions set forth above during such year.

8. *HEAT CONTENT*

Refer to Section 4 of the General Terms and Conditions.

9. *MEASUREMENT BASE*

Refer to Section 2 of the General Terms and Conditions.

10. *GENERAL TERMS AND CONDITIONS*

The General Terms and Conditions as contained in this Original Volume No. 3 are applicable to this rate schedule and are hereby made a part hereof, except that the tolerance of meter inaccuracies hereunder shall be 1%, rather than 2% as specified in Section 3.5 of the General Terms and Conditions.

[fol. 279] EXHIBIT 4 TO MEMORANDUM

EL PASO NATURAL GAS COMPANY
FPC Gas Tariff, Original Volume No. 3

Original Sheet No. 23

RATE SCHEDULE XS-PL-1

Excess Gas Service

1. *AVAILABILITY*

This rate schedule is available to any Buyer which purchases gas on a firm basis from Seller under Rate Schedule PL-1, and which has notified Seller that it may desire to purchase gas, when offered, under this rate schedule.

2. *APPLICABILITY AND CHARACTER OF SERVICE*

This rate schedule shall apply to gas delivered to Buyer in excess of Seller's obligations to Buyer under Rate Schedule PL-1.

Deliveries of gas hereunder shall be on an interruptible basis pursuant to advance operating arrangements between Buyer and Seller, and shall be subject to such curtailment, interruption or discontinuance at any time as Seller, in its sole judgment, deems desirable.

3. *RATE*

25.5¢ per Mcf

4. *MINIMUM BILL*

None

5. *DETERMINATION OF DELIVERIES*

The volume of gas delivered under this rate schedule on any day shall be all gas in excess of the volumes

which Seller is obligated to deliver to Buyer on such day under executed service agreements under Rate Schedule PL-1.

[fol. 280]

6. *PROCEDURE FOR OFFERING GAS UNDER THIS RATE SCHEDULE*

Whenever Seller is able and willing to offer gas for sale under this rate schedule, Seller will offer such gas in an equitable manner to all Buyers which have notified Seller of their desire to purchase gas when offered under this rate schedule. Any gas rejected by a Buyer may be offered by Seller to other Buyers in any manner Seller may elect.

7. *HEAT CONTENT*

Refer to Section 4 of the General Terms and Conditions.

8. *MEASUREMENT BASE*

Refer to Section 2 of the General Terms and Conditions.

9. *GENERAL TERMS AND CONDITIONS*

The General Terms and Conditions contained in this Original Volume No. 3 are applicable to this rate schedule and are hereby made a part hereof.

Issued by: Paul Kayser, President
Issued on: December 24, 1959

Effective: January 1, 1960

Issued to comply with order of the Federal Power Commission, Docket No. G13019, dated December 23, 1959.

[fol. 281]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

SOUTHWEST GAS CORPORATION, Intervenor.

APPLICATION FOR LEAVE TO INTERVENE—
Filed November 18, 1964

Comes now Southwest Gas Corporation ("Southwest") and respectfully applies for leave to intervene in the above-entitled proceeding pursuant to Rule 24 of the Federal Rules of Civil Procedure. Southwest is entitled to intervene herein for the reasons hereinafter set forth and under certain authorities specified in the Memorandum of Mountain Fuel Supply Company in Support of Motion to Intervene. This application is submitted on the following grounds and for the following reasons:

(i)

Southwest is a corporation organized and existing under the laws of the State of California and is qualified to transact intrastate business as a foreign corporation in the States of Arizona and Nevada. Southwest is certificated by the California Public Utilities Commission to distribute

[File endorsement omitted]

natural gas to approximately 15,000 customers in San Bernardino County, California; is certificated by the Arizona Corporation Commission to distribute natural gas to approximately 15,000 customers located in Pinal, Gila, Greenlee and Mohave Counties, Arizona; and is certificated [fol. 282] by the Public Service Commission of Nevada to transmit and distribute natural gas to approximately 50,000 customers (either directly or through other retail distributors) in the State of Nevada. Southwest distributes natural gas to retail customers in the communities of Las Vegas and North Las Vegas and the surrounding unincorporated area and wholesales natural gas to California Pacific Utilities Company and Boulder Natural Gas Company for distribution in Henderson and Boulder City, respectively, all in Clark County, Nevada. Southwest through its Northern Nevada Division, distributes natural gas to retail distribution customers in the northern Nevada communities of Elko, Carlin, Battle Mountain, Winnemucca, Lovelock, Fernley, Wadsworth, Fallon, Minden, Gardnerville, Yerington, Carson City and South Tahoe, and wholesales natural gas to Sierra Pacific Power Company for retail distribution in the communities of Reno and Sparks and the surrounding area.

(ii)

All gas which Southwest sells and distributes originates with El Paso Natural Gas Company ("El Paso"). The gas purchased by Southwest for distribution and resale by its Northern Nevada Division is supplied by the Pacific Northwest Division of El Paso, and the gas purchased by Southwest for distribution and resale elsewhere on its system in southern Nevada, California and Arizona is supplied from El Paso's several California transmission lines. Southwest is the only supplier of natural gas in the entire State of Nevada. During the calendar year 1963 approximately 17,500,000,000 cubic feet of natural gas were distributed

within Nevada and all of such gas was supplied by Southwest, which paid El Paso approximately $6,000,000 in consideration therefor.

(iii)

On April 6, 1964 the United States Supreme Court di- [fol. 283] rected El Paso to divest itself of certain of its properties without delay. On October 19, 1964 El Paso presented to the Court a plan for such divestiture, a copy of which plan has been supplied to Southwest. Southwest believes that if divestiture occurs substantially in accordance with said plan, both the new company to be formed from the Pacific Northwest Division ("New Company") as a result of the divestiture and the remaining El Paso will be competent to continue their respective activities as natural gas companies on separate bases, and that the plan accordingly is generally sound and equitable. Applicant considers that such plan, if approved by this Court together with such modifications therein as may be appropriate to satisfy the requirements of the United States Department of Justice and the provisions of the Natural Gas Act, will accommodate public interest requirements properly at issue before this Court. However, it is apparent from the proceedings of October 19, that other petitioners seeking leave to intervene, if such leave be granted, will propose major modifications to said plan of divestiture which could adversely affect the interests of Southwest and its customers.

(iv)

Southwest believes and therefor alleges upon information and belief that it is the only customer of El Paso who purchases gas both from El Paso's California transmission system and from its Pacific Northwest Division. Southwest therefore has a crucial interest in ascertaining that the divestiture by El Paso of its Pacific Northwest Division into the New Company will be fair and equitable to, and shall protect the interests of the customers of, not only

the New Company but also of El Paso as it will exist following the divestiture.

(v)

There is no other party to the above-entitled proceedings [fol. 284] which will adequately protect the interests of Southwest and its customers located in the States of California, Nevada and Arizona in the matters which certain other petitioners seek to raise before this Court if intervention is granted to any of those seeking intervention in this proceeding.

(vi)

No pleadings are submitted with this application for the reason that all issues raised by the pleadings herein have been resolved and Southwest does not seek to challenge the ruling of the Supreme Court of the United States.

Wherefore, Southwest prays for an order of this Court permitting Southwest to intervene in this proceeding and to participate therein as a party in intervention in such cause for the reasons hereinabove set forth if this Court should permit intervention by any party so petitioning this Court.

Respectfully submitted,

Charles H. McCrea, Attorney for Southwest Gas Corporation, 2011 Las Vegas Boulevard South, P. O. Box 1450, Las Vegas, Nevada.

[fol. 285] Affidavit of Service (omitted in printing).

[fol. 287]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

vs.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

UTAH PUBLIC SERVICE COMMISSION, Intervenor.

APPLICATION FOR LEAVE TO INTERVENE—
Filed November 18, 1964

Comes now the Public Service Commission of the State of Utah, a legally constituted agency of the State of Utah, and respectfully applies for leave to intervene in the above-entitled proceeding pursuant to Rule 24 of the Federal Rules of Civil Procedure. This application is submitted as parens patriae on the following grounds and for the following reasons:

I.

Applicant, under the laws of the State of Utah, and more specifically under the provisions of Section 54-4-1, Utah Code Annotated 1953, is vested with power and jurisdiction to supervise and regulate every public utility in the State of Utah, including natural gas companies, and to do all things which are necessary or convenient in the exercise of such power and jurisdiction. It is also the duty of applicant, under the provisions of Section 54-4-4, Utah

[File endorsement omitted]

Code Annotated 1953, to determine just and reasonable [fol. 288] rates and practices to be observed by public utilities, including natural gas companies supplying natural gas to the public for compensation.

II.

Natural gas is distributed within the State of Utah and the distribution thereof is subject to regulation by applicant, being a public utility activity as defined by Section 54-2-1 (29), Utah Code Annotated 1953. El Paso Natural Gas Company is the sole supplier of natural gas to Utah Gas Service Company, which company is presently furnishing natural gas to approximately 3,000 customers in Utah, including several industrial plants which are of importance to the economy of Utah. During the year 1963, approximately nine-hundred seventeen million eight-hundred fifty-eight thousand (917,858,000) cubic feet of gas were delivered by El Paso to Utah Gas Service Company. A substantial portion of the natural gas sales of Mountain Fuel Supply Company are made in Utah, the rates for which are subject to regulation by the Public Service Commission of Utah. Mountain Fuel Supply Company purchased approximately eighteen billion eight hundred forty-seven million (18,847,000,000) cubic feet of gas from El Paso Natural Gas Company in 1963. Sales of El Paso Natural Gas Company to the above two distributors of natural gas in Utah during the year 1963 amounted to approximately five million three hundred ninety thousand dollars ($5,390,000). Additionally, El Paso Natural Gas Company purchases substantial volumes of natural gas produced from acreage located within the State of Utah. It is expected that both El Paso Natural Gas Company and the new company which must be formed for the purpose of operating the facilities to be divested by El Paso Natural Gas Company will, if strong and soundly managed companies, be called upon to satisfy a continuing increase in the requirements of those markets each will serve. As those markets increase, such companies will be required to seek additions to their sources of gas

supply and among those sources it is probable will be the [fol. 289] potential natural gas reserves underlying the vast sedimentary basins in the Rocky Mountain area including those situated within the State of Utah. The market pressure thereby inducing such exploratory activity will serve to develop the natural resources available within the State of Utah to the benefit of the entire public within this State. Furthermore, development of such natural gas reserves within the State of Utah will provide an opportunity for Utah natural gas distributors to participate in utilization of such added production within the State in securing delivery from such reserves for the benefit of those consumers dependent upon them for natural gas service. Obviously, the ability of Utah natural gas distributors to secure deliveries of natural gas within an area lying so close to their markets will permit them to secure gas supplies at the lowest possible cost to the consequent benefit of those receiving natural gas service from them. It is of vital importance to natural gas distributors and consumers, as well as all members of the general public within Utah, that the companies resulting from consummation of a plan of divestiture be able to meet future natural gas requirements within the State of Utah, as well as those collateral public interest considerations herein described, in an efficient and adequate manner.

III.

On April 6, 1964, the United States Supreme Court directed that the defendant El Paso Natural Gas Company be ordered to divest itself of certain of its properties. On October 19, 1964, such defendant presented to this Court a plan for such divestiture. Applicant has reviewed such plan of divestiture and is satisfied that the plan, in its broad aspects, is equitable and will result in a situation under which El Paso Natural Gas Company and the new company will each be strong and capable of satisfying the requirements of their respective market areas. Applicant considers that such plan if approved by this Court together

[fol. 290] with such modifications therein as may be appropriate to satisfy the requirements of the United States Department of Justice will accommodate public interest requirements properly at issue before this Court. However, it is apparent from the proceedings of October 19 that other petitioners for intervention, if permitted to intervene, will propose major modifications to said plan of divestiture which could adversely affect the interests of the people of Utah.

IV.

Applicant is so situated that any order entered by this Court with respect to said divestiture, if reflecting modifications in the plan as heretofore urged by other applicants for intervention, may seriously prejudice the people of Utah and applicant with respect to its duty to protect the users, consumers and the general public of the State of Utah for the reason that any such order would appear to affect adversely the capital structure and revenue requirements of the entity which after divestiture will be supplying natural gas to the gas distributors and the people of Utah, and said capital structure and revenue requirements will in a large measure be determinative of the rates and charges for natural gas exacted from the people of Utah.

V.

Any order entered by this Court with respect to said divestiture will be binding upon the applicant, distributors, consumers and the general public of the State of Utah.

VI.

There is no other party to the above entitled matter which will adequately protect the interests of the people of the State of Utah and applicant in those matters it is anticipated will arise before this Court if intervention is granted any of those seeking intervention herein.

[fol. 291]

VII.

No pleadings are submitted with this application for the reason that all issues raised by the pleadings herein have been resolved and applicant does not seek to challenge the ruling of the Supreme Court.

VIII.

The intervention of applicant will in no way broaden the issues before this Court, nor will it unduly delay the proceedings or prejudice the adjudication of the rights of the original parties, or be in conflict with the policy and purposes of the statute under which action was commenced.

Wherefore, applicant prays for an order of this Court permitting applicant to intervene in the above-entitled cause and to participate therein as a party in intervention in such cause if any other petitioner for intervention in this matter be granted such intervention.

Dated this 18th day of November, 1964.

Respectfully submitted,

A. Pratt Kesler, Attorney General, State of Utah,
H. Wright Volker, Assistant Attorney General,
Counsel for Public Service Commission of Utah.

Address of Applicant: State Capitol, Salt Lake City, Utah.

[fol. 292] *Duly sworn to by Hal S. Bennett, Donald Hacking, C. R. Openshaw, Jr., jurats omitted in printing.*

[fol. 293] Affidavit of Service (omitted in printing).

[fol. 295]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Civil No. 143-57

UNITED STATES OF AMERICA, Plaintiff,

v.

EL PASO NATURAL GAS COMPANY and PACIFIC NORTHWEST PIPELINE CORPORATION, Defendants,

CASCADE NATURAL GAS CORPORATION, Intervenor.

MEMORANDUM OF EVIDENCE, LAW AND ARGUMENT IN SUPPORT OF APPLICATION FOR LEAVE TO INTERVENE—Filed November 19, 1964

Cascade Natural Gas Corporation, a Washington corporation, hereinafter referred to as "Cascade") herewith respectfully submits the following memorandum of evidence, argument and the law, pursuant to the Order of this Court made and entered the 21st day of October, 1964, in support of Cascade's application for leave to intervene in the proceedings before the Court in the above entitled case, dated the 5th day of October, 1964 and heretofore filed with this Court on or about October 7, 1964.

Memorandum of Evidence

1. There is attached hereto marked Annex A, the affidavit of O. M. Jones, President and a Director of Cascade, to which copies of the Annual Report of Cascade for the year 1963, copies of the currently effective gas service agreements between Cascade and El Paso Natural Gas Company

[File endorsement omitted]

(hereinafter referred to as "El Paso") for firm and interruptible natural gas service, a copy of a stipulation for moratorium on rate increases, a copy of a letter from El Paso dated July 17, 1963 respecting maintenance of interruptible gas service and rates, are attached, and made a part of said affidavit, which affidavit is offered in summation [fol. 296] of proof which may be adduced as to the corporate organization and standing of Cascade, the nature and extent of its operations, customers and finances and its existing contractual relationships with El Paso.

2. There is attached hereto marked Annex B and by this reference made a part hereof, a study prepared by V. W. Ruskin & Associates Engineering Ltd., 207 West Hastings Street, Vancouver 3, British Columbia, Canada, Consulting Engineers, at the request of and under the direction of the aforementioned O. M. Jones, acting for and on behalf of Cascade entitled "Cascade Natural Gas Corporation, 'Northwest Plan', Suggested Modification of Proposal for Divestiture", dated November 11, 1964 (hereinafter referred to as "the Northwest Plan").

This Plan which has been prepared in some haste owing to the short period of time that has elapsed since receipt by Cascade of a copy of El Paso's Proposal for Divestiture of its Pacific Northwest Division on or about October 17, 1964, constitutes Cascade's preliminary evaluation of the Proposal for Divestiture (hereinafter referred to as the "El Paso Plan"), on the basis of examining its probable effects to New Company (as said term has been applied by El Paso to the Company to be formed to take over its Pacific Northwest Division), the gas distributors in the Pacific Northwest and the public consumers of natural gas in that area, over the next five years and beyond. This study shows, among other adverse effects, that under the El Paso Plan there will be a serious curtailment of interruptible gas to Cascade and other distributors similarly situated in 1968 followed by even more serious curtailment in 1969.

Consistent with the Court's admonition that intervenors must assist the Court with positive suggestions and not merely impede the proceedings by arid criticism of the El Paso Plan, the study extends to a modification of the El [fol. 297] Paso Plan called "the Northwest Plan" which ameliorates the foregoing and other adverse effects of the El Paso Plan upon Cascade and others similarly situated.

A. Tab 1 is a map showing a revised proposed cut off point on the main transmission line between the San Juan gathering area and the Pacific Northwest marketing area at a point known as Mile 407, the reasons for which proposal are set forth briefly hereinafter and may be developed in full detail in the event Cascade is permitted to intervene in this proceeding.

B. Tab 2 consisting of Exhibits 2.1 to 2.11 inclusive, contains rough flow sheets for the maximum day, average day and average winter day five years hence, based upon information as to requirements of distributors obtained from El Paso for the year 1968, plus a small amount added for load growth in the fifth year, with supply figures obtained from Tab 8 of the El Paso Plan for 1968 plus assumed additional purchases of Canadian gas at Sumas sufficient to avoid interrupting interruptible customers on an average day. The requirements estimates indicate that looping between Sumas and Seattle, and additional compression, will be required by such date. Exhibits 2.4 to 2.8 show projections of estimated gas sales and revenues for the New Company over the next five years and Exhibit 2.9 shows a projection of the cost of gas. Exhibit 2.11 indicates, in Section A, the projected requirements as circulated by El Paso among the Pacific Northwest distributors prior to the decision of the Supreme Court ordering divestiture, and indicating no curtailment of interruptible gas through 1968. Section B shows the [fol. 298] effect of the El Paso Plan upon these projec-

tions and indicates serious curtailment of interruptible gas in the year 1968 followed by even more serious curtailment in 1969.

C. Tab 3 consists of rough flow sheets for the maximum day, average day and average winter day, together with five year projections of gas costs for the New Company under the Northwest Plan.

D. Tab 4 shows a comparison of estimated facilities which will be required to be constructed by 1969 to meet requirements, together with rough flow sheets (Exhibits 4.2 to 4.4 inclusive) for the maximum day, average day and average winter day, assuming additional supplies of gas can be obtained from the San Juan basin.

E. Tab 5 shows comparative financial statements for the five years through 1969 of New Company under the El Paso Plan and the Northwest Plan. The figures shown under the columns 1965, 1966 and 1967 under the heading "El Paso Natural Gas Co. Plan" have been furnished by El Paso; the comparable figures for 1968 and 1969 were projected from figures contained in Tab 2; and the figures under the heading "Northwest Plan" are derived from those contained under Tab 3.

Memorandum of Law and Argument Respecting Intervention

1. Cascade Is Entitled to Intervene in This Proceeding as a Matter of Right Under Rule 24(A)(2), Federal Rules of Civil Procedure.

A. Rule 24 of the Federal Rules of Civil Procedure, provides, *inter alia*:

> "Upon timely application anyone shall be permitted [fol. 299] to intervene in an action: * * * (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the

applicant is or may be bound by a judgment in the action; * * *".

In order to bring itself within this Rule, a prospective intervenor must satisfy both elements by showing that (a) the interest of the prospective intervenor is not and probably will not be adequately represented by the existing parties and (b) the prospective intervenor will be "bound" by the judgment in the sense of *res judicata*.

International Mortgage & Investment Corp. v. *Von Clem*, 301 F 2d 857, (2d Cir. 1962).
Sutphen Estates v. *United States*, 342 U. S. 19, 72 S Ct. 14, 96 L ed 19 (1951).
Sam Fox Publishing Co. v. *United States*, 366 U. S. 683, 81 S Ct. 1309, 6 L ed 2d 604 (1961).

B. *Cascade's interest in this proceeding is not and probably will not be adequately represented by the existing parties.*

Cascade is one of several "captive" customers of El Paso and, after the divestiture has been accomplished, will be a "captive" customer of New Company, Pacific Northwest Pipeline Corporation, and its successor, El Paso, having been the sole source of Cascade's natural gas requirements. By the terms of the gas service agreements between Cascade and El Paso (Exhibit 2 to Annex A hereto) El Paso is obligated to furnish, and Cascade is obligated to obtain from El Paso, all of Cascade's requirements of firm gas until the termination date of such agreement in 1981. Subject to right of cancellation upon appropriate notice the parties have bound themselves to furnish and take interruptible [fol. 300] gas supplies also and El Paso has committed itself to maintain current service and substantially current rates with respect thereto for the next nine (9) years (Exhibits 3 and 5 to Annex A hereto). The afore-

mentioned agreements provide that the obligations thereunder will be imposed upon, and the benefits thereunder will inure to the benefit of the successors and assigns of both parties. The El Paso Plan provides that the New Company will take over and perform the existing El Paso contracts with Pacific Northwest Division customers. Assuming that Cascade and New Company will thereafter be bound by such agreements, Cascade has an interest in the manner of disposition of these contractual rights and the ability of a successor to El Paso to perform as fully and satisfactorily as El Paso as it is presently constituted might perform thereunder. By reason of the semi-monopolistic, public service character which the New Company will assume, such ability is vital to the very existence of Cascade as a successful natural gas distributor in the future. On the other hand, El Paso is unlikely to represent this interest of Cascade. As a party to this proceeding El Paso will have an interest in the relationships between New Company and its customers for only that length of time required to consummate completely the divestiture as ordered by the Supreme Court. Thereafter, and for all time, presumably, if the Supreme Court's mandate is complied with, El Paso will have no further interest whatsoever in the conditions which thereafter prevail between New Company and its customers, except possibly an adverse interest as a com- [fol. 301] petitor of New Company. El Paso has been directed to create a new entity out of its Pacific Northwest Division which may be in a position to compete with El Paso itself for markets, notably those in California. Its attitude has been voiced by its counsel who, in opposition to the application of the State of California for leave to intervene, at the hearing on October 19, 1964, argued strongly that the present proceeding is concerned only with the anti-competitive effect of the El Paso Plan. Manifestly, therefore, El Paso cannot

legally be deemed to be a party which will adequately protect the interest of Cascade.

The Department of Justice is properly characterized as the guardian of the public interest so far as the competitive aspects of this anti-trust proceeding and divestiture thereunder are concerned. But it is submitted that once a method of divestiture is derived which appears to the Department of Justice to restore the prospective competitive situation visualized as a possibility by the majority of the Supreme Court in its decision in this proceeding, its function has been fully discharged and accomplished. The factor in this proceeding which makes it unique in the field of anti-trust litigation and which at the same time should compel consideration of and protection of the contracting parties who will be affected by the divestiture plan and order approving such plan, is that such divestiture will recreate a regulated public service company which will occupy and enjoy, if the gas service agreements between El Paso and its Pacific Northwest distributors remain enforcible after assumption by the New Com-
[fol. 302] pany, a monopoly with respect to the supply of natural gas within the whole broad expanse of the Pacific Northwest region. The consequences of the provisions of the divestiture plan will therefore have far reaching effects upon the economic welfare, in fact, the very continued existence, of Cascade and other distributors similarly situated, for a period of many years. The mere existence of the manifest public service aspects of the New Company demands that the interests of its prospective customers be adequately protected from the outset of its existence as a substitute for El Paso, and it is submitted that the protection of these interests far transcends both the function and the obligation of the Department of Justice. In this regard, Mr. Justice Harlan, in his separate opinion, points out that the Department of Justice, contrary to the Federal Power Commission, considered the

merger to be violative of the anti-trust laws and, *for that* reason *alone*, against the public interest. And it is not sufficient in this regard to state that the Federal Power Commission is a proper entity to consider and safeguard the interests arising from the public service aspect of the New Company, for the reasons that (a) the Federal Power Commission is not a party to this proceeding, and (b) even if the Federal Power Commission were a party hereto, its functions are restricted by the jurisdictional provisions of the Natural Gas Act, (15 U.S.C.A. Sec. 717, et seq.) to matters related to requirements for service to present markets only. It has been recognized even by witnesses for El Paso that the extent to which the Commission could, in any [fol. 303] proceeding before it, inquire into the adequacy of the reserves proposed to be transferred is a legal question without any precedent.

C. *Cascade will be "bound" by the judgment of divestiture in this proceeding.*

This Rule encompasses not only cases in which petitioners are bound by the outcome of the action, but also instances in which they may be bound.

See *International Mortgage & Investment Corp.* v. *Von Clem, supra.*

It is enough under this Rule that a prospective intervenor may be bound by a judgment in the action in the sense that it would seriously prejudice him. *Ford Motor Company* v. *Bisanz Bros., Inc. et al.*, 249 F.2d 22, at page 28, (8 Cir. 1957). If the practical effect of the divestiture order will be to deprive Cascade of its contractual right to have El Paso, with *its* resources and *its* reserves, provide gas service essential to the operation of its distribution systems, then Cascade will be bound and is entitled to intervene. As has been pointed out in subparagraph A above, if Cascade is to be bound

to the terms and provisions of its existing contracts with El Paso when such contracts have been transferred to New Company, as is contemplated under the provisions of the El Paso Plan, the order of this Court approving such Plan and ordering divestiture in accordance therewith will be *res judicata* with respect to Cascade's rights under these agreements.

If this Court should deny Cascade's application on the ground that Cascade will not be "bound" by a decree of divestiture which, *inter alia*, transfers the [fol. 304] service agreements from El Paso to New Company, Cascade not having been made a party, Cascade and other customers of New Company similarly situated would then be free to contend in another proceeding that the purported transfer of their contracts was invalid and released them from any obligation to buy gas from New Company. Such contentions would not be frivolous, because under ordinary circumstances, absent a divestiture proceeding, it is unlikely that Courts and regulatory bodies would allow El Paso to impose a weaker assignee upon Cascade or companies similarly situated merely on the strength of the assignability provision of the agreement. Therefore, this Court should make Cascade and other potential customers of any New Company parties to this action to assure their continued contractual obligation to New Company to buy its gas. And if they are to be bound, due process requires they be given an opportunity to intervene as parties in these proceedings.

Indeed, it seems to Cascade that El Paso, for the same reasons, should have been as equally concerned about obtaining the consent of Cascade, as well as that of other distributors similarly situated, as it was in obtaining the consents of its bondholders to the proposed Plan and, indeed, it would seem that such bondholders themselves would have a vital concern in the continued legal assurance that New Company would

continue to have El Paso's Pacific Northwest customers upon the same terms and conditions as prevailed during the ownership by El Paso of the Pacific Northwest facilities.

A leading case on the question of the right to intervene under Rule 24(A)(2) is *Sutphen Estates, supra,* [fol. 305] which involved divestiture of Warner Bros. theatre business from its production and distribution business, under the Sherman Act. In that case Warner was a guarantor of a lease of theatre properties made by the prospective intervenor to a subsidiary of a subsidiary of Warner. The obligation of the guarantee was to be transferred to a new corporation vested with only part of the assets and business of Warner. The situation of the beneficiary of the guarantee who was denied intervention in that case is clearly distinguishable from the contractual position of Cascade in this proceeding. The guarantee conferred a contingent, speculative benefit upon the prospective intervenor with no corresponding obligation running directly from the intervenor to a party to the divestiture proceeding. In the instant case, however, the order of divestiture will effectually bind Cascade to take its requirement of gas from the New Company instead of El Paso, for a long period of years. In a very real sense, therefore, the order of divestiture will modify the contractual rights of Cascade and may impair them seriously, and Cascade will thereafter have no forum in which to seek redress therefor. Moreover, as a practical matter, by reason of the fact that El Paso is now, and so far as can be foreseen, New Company will be in the future, the sole supplier of natural gas in the Pacific Northwest region, any rights which Cascade might have to terminate its existing El Paso agreements in the event of assignment to New Company, are meaningless and afford Cascade no protection in the event of threatened impairment of its gas supply or threat of future inability [fol. 306] of New Company to perform under the agree-

ments. In the absence of intervention herein and a careful adversary examination of the long range implications of the El Paso Plan with respect to the future ability of the New Company to perform under these contracts this result will have been based solely on the self-serving assurances of witnesses for El Paso in support of its Plan at the hearing thereon held October 19, 1964, before this Court.

2. Cascade Is Entitled to Intervene in These Proceedings as a Matter of Right Under Rule 24(A)(3) of the Federal Rules of Civil Procedure.

A. Rule 24(A)(3) of the Federal Rules of Civil Procedure provides, *inter alia*:

> "Upon timely application any one shall be permitted to intervene in an action: * * * (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the Court or an officer thereof * * *".

For intervention under this subsection of Rule 24, a prospective intervenor must make a showing with respect to two elements: (a) that there is or will be a distribution or other disposition of property subject to the control or disposition of the Court, and (b) that the prospective intervenor is so situated as to be adversely affected by the distribution.

B. *Divestiture under the El Paso Plan constitutes a distribution of property subject to the control or disposition of the Court.*

There can be little question but that divestiture of the Pacific Northwest Division of El Paso, either pursuant to the El Paso Plan or some modification thereof, [fol. 307] will constitute a disposition of property which is subject to the control or disposition of the Court

hearing this proceeding. Just as under the Sherman Act, it is the authority of this Court that will sanction and direct the reorganization pursuant to such Plan.

Sutphen Estates v. *United States, supra.*

United States v. *Paramount Pictures, Inc.*, 334 U.S. 131, 92 L ed 1260, 68 S Ct. 915 (1948).

It is submitted that there is nothing in the current proceeding under the Clayton Act which would persuade a different conclusion than that reached in the above cited cases brought under the Sherman Act.

C. *Cascade is so situated as to be adversely affected by distribution to New Company of certain properties of El Paso and retention by El Paso of other properties pursuant to an order of this Court approving the El Paso Plan.*

A prospective intervenor is not required to "plead its evidence" of financial injury in the petition for intervention. If the likelihood of such injury exists, the prospective intervenor is statutorily entitled to intervene until it can be found in either the instant proceeding or in a separate one, that no substantial injury could result from the proposed disposition.

Interstate Broadcasting Company v. *United States*, 286 F.2d 539 (D.C. Cir. 1960).

In *Plitt* v. *Stonebraker*, 195 F.2d 39 (D.C. Cir. 1952), the Court allowed the assignee of a note to intervene under this subparagraph of Rule 24 in an action where the Court had custody of proceeds of the sale of beer which the intervenor claimed was security for his note. The Court observed that the intervenor would be ad- [fol. 308] versely affected if the proceeds were distributed to someone other than him and distinguished the *Sutphen Estates* case, *supra*, where intervention was not allowed because the Court specifically found

that there was no showing or attempt to show any adverse effect that would result from the change of guarantor.

The mere fact that a prospective intervenor may have an alternative remedy by injunction action or suit for damages is not determinative of the question of the possible adverse effect of the disposition of property within the control of the Court.

Formulabs, Inc. v. *Hartley Pen Company, et al.*, 275 F.2d 52 (9th Cir. 1960).

Cascade will be adversely affected, as will, in general, all distribution companies now dependent for their natural gas supply upon El Paso if the effect of the disposition of El Paso's Pacific Northwest Division pursuant to an order of this Court either (a) results in a diminished reserve life for the gas reserves which are thereby allocated to New Company as compared to the reserves now available through El Paso as a single entity or which could reasonably have been expected to accrue to Pacific Northwest Pipeline Corporation, had it remained an independent entity, and (b) if the costs of the gas reserves allocated to the New Company are so high as to require substantially increased rates to be imposed upon New Company's customers. These are not merely possibilities, but probabilities in the present posture of this proceeding, as shown elsewhere in this Memorandum and Annexes thereto.

[fol. 309]

Memorandum of Law and Argument Respecting the Ultimate Plan of Divestiture

1. It Is Not Necessary for the Plan of Divestiture to Order Divestiture of all the Assets Acquired by El Paso from Pacific Northwest Pipeline Corporation.

The El Paso Plan has apparently been conceived upon the principle that compliance with the divestiture order does

not require the reconstitution of the former Pacific Northwest Pipeline Corporation in the form of New Company, with such of the assets which Pacific Northwest Pipeline Corporation had at the time of the merger as may remain, augmented by such other assets as Pacific Northwest Pipeline Corporation might be assumed to have acquired had it remained a separate and competing entity. It would appear that within the limits of any guidelines handed down by the Supreme Court pursuant to its order of divestiture, the general rule is that at least in the cases of divestiture of assets unlawfully acquired and held in violation of the Clayton Act, as distinguished from stock interests, complete divestiture of all assets acquired through the merger, together with all assets which probably would have been acquired during the merger period by the Company unlawfully acquired had it been an independent entity is not required as a matter of law.

United States v. *New England Fish Exchange*, 258 F. 732 (D.C. Mass 1919), modification denied, 292 F. 511 (D.C. Mass 1923).

Schine Chain Theaters v. *United States*, 334 U.S. 110, 92 L.ed. 1245, 68 S.Ct. 947 (1948).

United States v. *Continental Can Co., Inc.* (D.C. N.Y., Sep 25, 1964) CCH Trade Cases Para. 71,264.

See also dissenting opinion of Justice Frankfurter in *United States* v. *DuPont de Nemours & Co.*, 366 U.S. 316 at page 357, 6 L.ed. 2d 318, 81 S. Ct. 1243 (1961), at page 342 (L.ed.).

[fol. 310] 2. The Court Must Take Account of Public Service as Well as Anti-trust Considerations in Framing a Plan of Divestiture.

No specific guidelines for the divestiture in this proceeding were handed down by the Supreme Court in *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 12 L. ed. 2d 12, 84 S. Ct. 1044 (1964). There is an inference con-

tained in the last paragraph of the majority opinion that El Paso, by reason of having been on notice of the anti-trust charge could have maintained and operated a separate entity and that such separate entity now should be divested and placed in such a position that it could reassume the position of a strong competitor of El Paso, which the Supreme Court found that Pacific Northwest Pipeline Corporation occupied at the time of the merger. But as El Paso's Plan recognizes, there is no mandate that Pacific Northwest Pipeline Corporation be reconstituted exactly as it was before the merger.

The criteria of *U.S.* v. *American Tobacco Co.*, 221 U.S. 106, 55 L. ed. 663, 31 S. Ct. 632 (1911), while framed to aid in determining whether the equitable remedy of divestiture should be invoked at all, are useful here in determining the form the order of divestiture should take. The criteria are:

> (1) The duty of giving complete and efficacious effect to the prohibitions of the statute.
>
> (2) The accomplishing of this result with as little injury as possible to the interests of the general public.
>
> (3) A proper regard for the best interests of private property which may have become vested in many persons as a result of the acquisition either by way of stock ownership or otherwise of interest in the stock or securities of the combination without any guilty knowledge or intent in any way to become actors or [fol. 311] participants in the wrongs.

The Northwest Plan best satisfies these criteria and improves upon a simple reconstitution of Pacific Northwest Pipeline Corporation and upon the El Paso Plan in creating a New Company more advantageously situated to bring gas from Western Canada to California to compete there with El Paso. In this respect "the Northwest Plan" is the plan most responsive to the desire of the Supreme Court, infer-

able from its several references to such a development in its opinion, that such competition for El Paso be reestablished.

3. Failure of El Paso's Plan of Divestiture to Allocate Sufficient Gas Reserves to New Company Adversely Affects Cascade and the Public's Interest in Service.

It is almost axiomatic that New Company, in order to be or become at any time in the future a serious threat to El Paso as a competitor in California markets, must first of all be so constituted that it can handle, without question, the growing demands for natural gas in its primary market area, which will be the Pacific Northwest, and more specifically, Western Washington and Western Oregon. Therefore, a basic criterion in determining the propriety of any plan of divestiture must necessarily be the assurance of continuing adequate gas reserves, at reasonable prices, to serve, first of all, the Pacific Northwest markets, and secondarily, to provide additional reserves, together with a financial capability, at least to pose a substantial threat of invasion of El Paso's primary markets. This view would seem to be completely in accord with the observations of the majority opinion of the Supreme Court that Pacific Northwest was no feeble, failing Company, nor was it inexperienced and lacking in resourcefulness, and to the effect that it was prospering and appeared strong enough to warrant a "treaty" with El Paso that protected El Paso's Cali- [fol. 312] fornia markets. The Supreme Court further noted that Pacific Northwest had "enormous reserves in the San Juan Basin," and the order entered November 30, 1959, in the merger proceedings before the Federal Power Commission (Docket G-13018 and G-13019) provides further evidence that Pacific Northwest Pipeline Corporation was, and would have continued to be, a competitor of El Paso for gas in the San Juan Basin area, recognizing that it would be eliminated by the merger as a competitor for available gas reserves in producing fields economically accessible to both it and El Paso, particularly in the San Juan Basin,

The El Paso Plan not only omits allocation of all gas reserves in the San Juan Basin which could be said to have been acquired by Pacific Northwest Pipeline Corporation during the merger period had it not been merged into El Paso, but also shows a reduction of the reserves which the Supreme Court found that Pacific Northwest Pipeline Corporation owned or had under contract in the San Juan Basin at the end of 1957 in total amount of 4.54 trillion cubic feet, to 2.52 trillion cubic feet as proposed under the "New Company" summary of dedicated reserve (Tab 7 of El Paso Plan). The schedules and contracts appended as part of the El Paso Plan indicate that the San Juan Basin reserves represent the lowest well-head cost of any reserves in the system. El Paso proposes to make up a portion of the deficiency in allocation of San Juan Basin reserves by adding some 918 billion cubic feet of Canadian gas, via Kingsgate and total Canadian reserves of 2.47 trillion cubic feet, which is only slightly in excess of the 2.33 trillion cubic feet which Pacific Northwest had under contract in Canada at the end of 1957. The Supreme Court observed, further, that by 1958 one-half of Pacific Northwest's natural gas sales were of gas from Canada, strongly suggesting that the San Juan Basin reserves would have been depleted [fol. 313] for use in the Pacific Northwest Division of El Paso at a very much slower rate than El Paso apparently assumes. El Paso seeks to justify this historical disparity by showing that the deliverability life of the New Company's proposed reserves is roughly equivalent to that of El Paso and that such reserves are sufficient to permit the New Company to meet its *firm* obligations for a period of 14 years without curtailment. Testimony of Mr. Boyd adduced at the hearing on October 19, 1964, indicated that such estimate was based upon an increasing trend of total sales for New Company to 1967, with a "plateau" thereafter, whereas it appears that the deliverability life of the remaining El Paso system contemplates a major continuing expansion of El Paso's markets. It is difficult to understand the basis for this view since El Paso has not offered

demand and supply projections for more than a one-year period, in contrast to the 5 year projections normally used in feasibility studies. It is submitted that there is no reason to project any curtailment of the growth of New Company's Pacific Northwest markets after 1967 and, in fact, the reasonable projections made by Cascade and included in Annex B hereto indicate the necessity for substantial looping of sections of New Company's pipeline by such date to handle the anticipated increase in requirements (Tabs 3 and 4 of Annex B). Furthermore, the comparison of gas supply between New Company and El Paso on page 5 of the El Paso Plan does not take into consideration the very substantial disparity in cost as between the relatively high cost Kingsgate gas and the relatively lower well-head cost of the San Juan gas supply. The burden which this will ultimately place on New Company, and hence on its customers, is tacitly recognized by El Paso in its proposal to take a portion of the high-priced Kingsgate gas and replace it with San Juan gas in diminishing quantities during the first five [fol. 314] years (Tab 5 of El Paso Plan). If the New Company is not so constituted that it will have adequate reserves of reasonably priced gas with which to meet the projected growing demands of what will be its primary market area, how can it reasonably be expected to become even a potential competitive factor in the California natural gas market? As indicated in Annex A and Annex B hereto, Cascade's projections of the requirements for natural gas of all distribution companies in the Pacific Northwest area for the 5 year period commencing with the year 1965, based upon their individual estimates furnished to El Paso prior to the divestiture order of the Supreme Court and tabulated by El Paso for distribution back to all its customers in the Pacific Northwest area, and based upon the projected supply data contained in the El Paso Plan, indicate a severe curtailment of interruptible gas deliveries in the latter two years of this period. Prior to the divestiture order, El Paso had given assurances to Cascade of its intention to continue

supplying interruptible gas service for a period of 10 years from 1963 at rates not more than nominally above those then prevailing.

By reason of Cascade's wide-spread geographical service area and consequent inability to integrate its system, Cascade is more heavily dependent for revenues and earnings upon interruptible gas service than are other distribution companies in the Pacific Northwest area, although certain others also derive a substantial percentage of sales and revenues from this source. Upon the assumption that no more reserves are allocated to New Company than those proposed by El Paso, Cascade's studies indicate that its net income could be severely affected adversely commencing with the year 1968. Based upon an assumed continuation of the approximately 54% average of interruptible gas revenues to total revenues it can be readily seen that a curtail- [fol. 315] ment of approximately 23% in 1 year, rising to 61% the following year, could seriously adversely affect the ability of Cascade to continue earning a reasonable rate of return upon its investment which, at the end of 1963 was in excess of $45 million (Exhibit 1 to Annex A). It is estimated that such curtailment could result in reducing Cascade's net income before income taxes by more than $500,000 in 1968 and by $1,400,000 in 1969. This situation would, in turn, have an adverse effect upon its ability to continue rendering adequate service to both its firm and industrial customers.

In the Pacific Northwest, interruptible gas performs several important and necessary functions:

(1) Certain distributors have a distinct "summer valley" in their load curve. This would lead to a very low load factor of operation for the New Company pipeline were it not for distributors like Cascade, whose interruptible gas sales account for approximately 77% of its sales volumes and 54% of its revenues (Annex A). These interruptible sales help El Paso and will help New Company to operate closer to 100% load fac-

tor, and in the long run to reduce the gas cost to all distribution companies in the Pacific Northwest, for both firm and interruptible service. Cascade estimates that interruptible gas would also account for about 28% of the sales and 22% of the revenues for New Company.

(2) The availability of interruptible gas is important from the point of view of fostering industrial development in the Pacific Northwest and with such industrial development, the further growth of residential and commercial firm customers. With curtail- [fol. 316] ment such as is projected for the fourth and fifth years of New Company operation, under the El Paso Plan, even more severe consequences than those projected herein by Cascade could well occur by reason of a shift of industrial interruptible customers from the use of gas to the use of competing fuels.

(3) The availability of substantial quantities of interruptible gas permits Cascade, which has a substantial mileage of sales laterals (Exhibit 1 to Annex A) to be operated near 100% load factor which, over a period of time, will permit Cascade to hold down the cost of service to all customers, both firm and interruptible.

(4) Interruptible gas sold to industrial customers mainly to fill a valley in the firm gas load curve of residential and commercial customers represents a more desirable use of gas than does a large volume of firm gas sold for boiler fuel without reference to the gas needs of residential and commercial customers.

[fol. 317] 4. The El Paso Plan Can and Should Be Modified to Avoid Long-Range Adverse Effects Upon Cascade and Other Pacific Northwest Distributors.

On the basis of studies made by Cascade (Annex B), Cascade believes that the El Paso Plan is not in the best

interests of the New Company, the Pacific Northwest distributors and the public in the Northwest, nor is it in the best interest of the public in California. It is not the purpose of Cascade in seeking to intervene in this proceeding, to introduce additional issues into the proceeding, or to unduly delay it in any way, nor, in fact, to criticize unduly the El Paso Plan, recognizing that any plan which is based in part upon future projections must necessarily be subject to differing viewpoints as to its merits. In a spirit of compliance, therefore, with the mandate of this Court expressed at the hearing on the El Paso Plan held October 19, 1964, that the Court would welcome constructive suggestions from interested parties with respect to the method of divestiture Cascade herewith offers a proposed modification of the El Paso Plan which it believes to be feasible and a very practical answer to the apparent problem of inadequate allocation of reserves to New Company, at the same time providing a financially strong entity in the form of New Company with very reasonable prospects that it can, in the future, become a competitive factor in the California market, assuming that such market will continue to expand at an annual rate which will absorb the existing and immediately projected competitive capacity recognized by the Supreme Court in its opinion as now existing.

Cascade has previously referred to the proposed retention by El Paso, under the El Paso Plan, of all San Juan basin reserves which have been acquired or contracted for since the date of the merger. One of the manifest purposes [fol. 318] of the merger of Pacific Northwest Pipeline Corporation and El Paso was the benefit that would accrue to both companies through co-ordinated operation and development of the San Juan area. There is little doubt that had Pacific Northwest Pipeline Corporation continued in operation, it would have attempted to explore and acquire contracts for additional gas in that area. If El Paso is entitled to retain this advantage which it received as a result of the merger which has been ruled to be illegal, then alternate and compensatory provision should be made

in any plan of divestiture which would overcome, for New Company and its customers, including Cascade, the disadvantage which New Company will experience through not having available, the gas reserves to which it is entitled and which its customers, will in the future, need.

With limited gas reserves allocated to it in the San Juan basin, and with no pipeline of its own to California directly from the San Juan Basin, New Company will be faced with the practical alternative of selling its gas to El Paso for transmission to and resale in California or the transportation of such gas northward through its existing pipeline. The first 407 miles of the former Pacific Northwest Pipeline Corporation transmission line extends from the San Juan Basin in New Mexico through Colorado and into Wyoming. The principal sales and exchanges in these 407 miles are a pipeline sale of about 100 million cubic feet per day to Colorado Interstate Company, and the proposed exchange of 90 million cubic feet per day of San Juan gas with El Paso. The gas delivered from all the reserves South of compressor Station No. 6, including the San Juan gas, just about equals the sales and exchanges in the 407 mile section, so that on an average day, little gas flow travels northwards beyond Station No. 6. Cascade's projections show, in fact, that on an average day in the 5th year, only about 6 MMcf per day travel northwards (Ex- [fol. 319] hibit 2.1, Tab 2 of Annex B). The line flow in the first 407 miles, which has carried up to 280 MMcf per day in the past, is less than 106 MMcf per day on an average day. Under the El Paso Plan, New Company will have over $100 million of investment in the San Juan basin, the Ignacio, and the 407 miles of main transmission pipeline which is only partially utilized.

While recognizing that further substantial allocation of reserves to New Company must be made, Cascade questions the advisability, from the standpoint of consumers, whether they be located in the Pacific Northwest area or California of intensified competition for remaining undedicated reserves in the San Juan basin, which competition, in all

likelihood would serve over a period of time to drive upwards the field price of gas in place. The value in acquisition by New Company of additional reserves in the San Juan basin, even though relatively cheap at the well-head, is minimized by the time it is delivered to the major marketing area of New Company by reason of the necessity of moving it approximately 1,300 miles northwest for ultimate consumption in the Pacific Northwest load center located roughly between Seattle and Portland. By the time it is transported to the Pacific Northwest, it is no longer "cheap gas" and is probably only marginally cheaper than supplies of Canadian gas delivered at Sumas and transported the very short distance from there to the indicated major marketing area. Cascade's studies show that if additional San Juan basin gas were allocated to New Company in sufficient quantities to enable it to meet the load growth in the Pacific Northwest projected for the next 5 years, very extensive looping and additional compression would be required (Tab 4 of Annex B). This looping would be required through Utah, Wyoming, Idaho and Oregon through fairly sparsely populated regions, where few additional customers could be picked up by the looped lines.

[fol. 320] If El Paso be permitted to retain substantial reserves of gas which very reasonably might be expected to have been acquired by Pacific Northwest Pipeline Corporation had it remained a separate, competitive entity, and if as contemplated in the El Paso Plan, it is permissible that El Paso add certain properties to the system originally acquired from Pacific Northwest, such as the proposed $50 million in improvements plus $9.5 million for the Opal gasoline plant, then it should also be permissible that certain other properties be subtracted from the projected new system, provided that such can be shown to be in the public interest and economically and financially feasible. Upon such premises, Cascade urges consideration of the modification to the El Paso Plan embodied in Annex B hereto and which it has designated as the "Northwest Plan." This modification contemplates that El Paso divest

itself of the system formerly owned by Pacific Northwest Pipeline Corporation North of Mile 407, at the block valve down stream between compressor Stations No. 6 and No. 7, and that El Paso retain the San Juan gas reserves, the Ignacio and Barnhart gasoline plants, and the 407 miles of main transmission line Southeast of such point. And that in lieu thereof El Paso will allocate to New Company all of the gas supply provided for by the "Border Contract" referred to in the Sumas Exchange Agreement (Tab. 3 of El Paso Plan). This proposed modification would relieve New Company of the burden of over $100 million of investment of reserves, plant and main transmission line remote from its primary market area. It would minimize the presently uneconomic situation whereby "cheap" San Juan basin gas may be moved 1,300 miles Northwest to the area of ultimate consumption in the Pacific Northwest at a delivery cost substantially the same as the "higher cost" Sumas Canadian gas, while "higher cost" Canadian [fol. 321] gas is being moved 900 miles South by others, such as Pacific Gas Transmission Company, for ultimate consumption in California at still higher cost. In view of the likelihood that very substantial additional reserves of British Columbia gas will shortly be looking for markets on the West Coast of the United States (See Annex A) New Company will be able to take advantage of its reduced burden of debt capitalization to contract for or acquire additional Canadian gas reserves which Cascade's studies show will be required in its primary market area within the next 5 years and which it will certainly need if it is ever to compete in the California market. It is noteworthy in this connection that the majority opinion of the Supreme Court observed that Pacific Northwest Pipeline Corporation had proximity to the California market, being 550 miles distant in Wyoming, even nearer in Idaho and only 250 miles away in Oregon. As can be seen by the projections in Tab 3 of Annex B, various amounts of looping of lines from Sumas to Seattle and Portland will be required, but may be constructed at far less cost to New Com-

pany than would be involved in looping sections of the Southeastern portion of its pipeline from the San Juan basin to the Pacific Northwest. These relatively short loops to bring additional gas supplies from Canada could constitute the start of a pipeline system which eventually could extend all the way to the California border in the event that the California market desires additional and competitive gas supplies in the future. No plans have been proposed for the construction of a pipeline by New Company from the San Juan Basin to California, which parallels the existing El Paso lines and would be very much longer than an extension from the end of New Company's line near Grants Pass, Oregon. The only alternative route that New Company would have for transportation of its gas from the San Juan Basin to California would be [fol. 322] through a scheme similar to the Rock Springs project, which the Federal Power Commission has refused to certificate on the ground that it is too circuitous to be economic (Docket No. G-16235 and G-16237 July 12, 1963). By contrast, it would appear that the best and most likely prospect that California consumers of gas might look forward too, insofar as prospective competition in that area from New Company is concerned, will be afforded through extension of New Company's Pacific Northwest transmission facilities and the utilization therein of additional supplies of Canadian gas obtained through the Sumas station.

Under Tab 5 of Annex B, estimates of earnings and rate of return are presented for New Company under the El Paso Plan and under the Northwest Plan. It will be seen that the rate of return with the Northwest Plan is considerably higher, in the future, so that in addition to assuring Cascade and other distributors that adequate gas supplies currently envisaged as being available in the future through El Paso as a single entity, will be assured through New Company, better assurance is also given that no rate increases will be imposed upon Cascade and other distribu-

tors, if the actual sales of the distributors fall short of their projections. If the projected sales figures of the distributors are in fact attained, this plan affords a better chance of a rate decrease.

In summarizing the modification herein urged by Cascade as a solution to the prospective adverse effects of the El Paso Plan, Cascade urges serious consideration of its "Northwest Plan" modification in the public interest and for the following principal reasons:

(1) It will lead to maintenance of current rates for gas service to Pacific Northwest distributors and the possibility of lower gas costs and therefore, better [fol. 323] chances of rate decreases in the immediate future.

(2) It will free the San Juan Basin reserves for the California and Southwestern States markets, where they can be transported at lesser cost than to the Pacific Northwest and where they will lead to relatively cheap gas prices to the public in these principal market areas.

(3) It will make much more feasible economically, in the future, the extension by New Company of its system southwards so as to compete in offering to bring Canadian gas to the California border, if the California market requires it.

(4) It will provide for an immediate and future augmented supply of Canadian gas at a time when the Canadians are anxious to sell large volumes of gas at a reasonable price, owing to present construction of an extension of the transmission line of West Coast Transmission Company, Ltd. to tap large additional gas reserves which would thus be dedicated to the Pacific Northwest, and possibly, the California markets.

(5) It avoids present controversy over the fact that the El Paso Plan fails to provide for a fair allocation

of San Juan Basin reserves between El Paso and the New Company.

(6) It avoids a highly likely future controversy between California and the Pacific Northwest over the allocation of presently undedicated San Juan Basin gas reserves and those to be developed in the future.

[fol. 324] Conclusion

For the foregoing reasons, Cascade respectfully submits that it is entitled to intervene in the proceedings before this Court with respect to the method of divestiture of certain properties of El Paso Natural Gas Company; to participate constructively therein as a party in intervention; and, upon leave of this Court, to offer testimony and exhibits in support of the statements, allegations and contentions set forth in its Application and this Memorandum.

Respectfully Submitted

Jones, Grey, Kehoe, Hooper & Olsen, By R. B. Hooper, Attorneys for Applicant, Cascade Natural Gas Corporation, 1000 Norton Building, Seattle, Washington 98104, Area Code 206–MA 4-0900.

[fol. 325] Certificate of Mailing (omitted in printing).

[fol. 326] Certificate of Service (omitted in printing).

[fol. 327]

Annex A to Memorandum of Evidence, Law and Argument in Support of Application for Leave to Intervene

AFFIDAVIT OF O. M. JONES

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

O. M. JONES, being first duly sworn, on oath deposes and says:

1. He is and at all times since January, 1958, has been the duly elected and acting President and a Director of Cascade Natural Gas Corporation (hereinafter referred to as "Cascade"), a Washington corporation, having its principal place of business at 222 Fairview Avenue North, Seattle, Washington. His full name is OWEN MARSHALL JONES, and his place of residence is 8035 Forest Drive, Seattle, Washington. In his capacity as chief executive officer of Cascade, he has general supervision of all normal operations of that Company, participates in the responsibility for all financing matters and is charged with the preparation and making of all reports to shareholders.

2. He makes this Affidavit in support of the Application of Cascade to intervene in the above-entitled proceeding, dated October 5, 1964, which is on file in this cause, and as an offer of proof of the allegations contained therein, all [fol. 328] of which said allegations are incorporated herein by reference and made a part hereof as though fully set forth herein. Affiant is prepared to establish, in the event of grant of leave to intervene, by introduction of appropriate documents, including Articles of Incorporation and By-Laws to date, and Certificates of Good Standing and Qualification in the States of Oregon and Washington, the corporate status and business and legal standing of said corporation under the laws of the States of Oregon and Washington.

3. In order to avoid unduly burdening the record in this proceeding at this time and for the purpose of establishing the nature and extent of Cascade's operations and the allegations pertaining thereto contained in its Application for Leave to Intervene, there is attached hereto marked Exhibit 1 and by this reference made a part hereof, the Annual Report of Cascade for the year 1963 which has been prepared under and pursuant to the direction of affiant and transmitted to each of affiant's shareholders. Affiant states that to the best of his knowledge said Annual Report correctly states the facts respecting Cascade as set forth therein, including without limitation, the comparative statistics for the years 1958 through 1963 appearing on the last page thereof.

4. Since December 31, 1963, Cascade has added 4,192 residential customers, 669 commercial customers, and 5 industrial customers and as of June 30, 1963, served a total of 32,058 customers. On the same date, gross plant additions since December 31, 1963, totaled $2,789,000, and natural gas service has been introduced into three new communities.

5. There are attached hereto marked Exhibits 2 and 3, true copies of the currently effective gas service agreements between Cascade and El Paso Natural Gas Company (hereinafter called "El Paso"), for firm and interruptible gas [fol. 329] service respectively, pursuant to which agreements Cascade obtains its entire requirements of natural gas. Executed original counterparts of each of said agreements are in the custody of affiant. The firm service agreement superseded prior agreements of generally like effect which had been entered into between Cascade and El Paso from time to time following consummation of the merger of Pacific Northwest Pipeline Corporation into El Paso. Prior to such event Cascade had individual firm service agreements with Pacific Northwest Pipeline Corporation covering service to each of Cascade's communities from the respective gate stations on the transmission line of Pacific Northwest Pipeline Corporation. Since the merger,

El Paso has been, and continues to be, the sole supplier of natural gas to Cascade and to all other distribution companies within the State of Washington. Affiant believes and therefore avers that the aforementioned firm gas service agreement between Cascade and El Paso is representative of similar agreements with all other gas distribution companies in the Pacific Northwest area and that in the event New Company succeeds El Paso as such supplier of natural gas, it will be entitled to and will be obligated to furnish all requirements of Pacific Northwest gas distribution companies and direct customers for a period substantially equivalent to that provided in the Cascade agreement, which does not expire until February 28, 1981.

6. There are attached hereto marked Exhibits 4 and 5 and by this reference made a part hereof, a copy of a stipulation entered into between El Paso and its distributor customers, dated July 17, 1963, limiting rate increases by El Paso, and a copy of a letter from the President of El Paso respecting continuity of interruptible service rates. Executed original counterparts of each of said agreements are in the custody of affiant.

[fol. 330] 7. As indicated in Exhibit 1 hereto, Cascade has outstanding, in excess of $12,000,000 of bonds secured by a First Mortgage upon substantially all of its properties under an Indenture requiring that Cascade furnish to the Trustee for the bondholders each year a certificate of gas supply stating that the date of exhaustion of available gas supply is not earlier than April 1, 1978, and that the date of exhaustion of firm gas supply is not earlier than April 1, 1976, and providing for an acceleration of sinking fund payments in the event that said dates shall be earlier than those indicated, respectively. In making such certificate, Cascade must rely upon the independent evaluation of the reserves available on each anniversary date to Cascade's supplier.

8. The data, projections and schedules contained in Annex B to the Memorandum of Evidence, Law and Argument

of Cascade in this proceeding in support of its application for leave to intervene were prepared, following receipt of El Paso's Proposal for Divestiture on or about October 17, 1964, under the supervision and direction of affiant, by and with the assistance of Mr. Vern Ruskin of V. W. Ruskin & Associates Engineering Ltd., Vancouver, British Columbia, Canada. Mr. Ruskin is a registered professional engineer in the Provinces of British Columbia and Ontario, Canada, and the State of Washington, and is President of a consulting engineering company which has been engaged for upwards of four years in the preparation of feasibility and economic engineering studies. Mr. Ruskin has had approximately twenty years experience as a graduate engineer and economist, in the fields of engineering and economic studies, and the design and supervision of construction of utility facilities. He has previously been retained by Cascade in the preparation of feasibility and engineering studies respecting lateral line construction projects in the Grays Harbor and Kitsap Peninsula areas of the State of Washington.

[fol. 331] 9. Contrary to the representations contained on page 1 of the El Paso Proposal for Divestiture, no conferences were held between representatives of Cascade and El Paso respecting the proposed divestiture prior to receipt by Cascade of a copy of the proposal for Divestiture as filed in this proceeding. Owing to the relatively short time available for detailed examination and study of the El Paso Proposal for Divestiture, the studies contained in Annex B must necessarily be regarded as preliminary. The figures shown on Annex B are based on El Paso's Proposal of Divestiture, and on other public sources, including Annual Reports of El Paso, pertinent information filed with Federal Power Commission in various hearings, sales information provided by distribution companies, and verbal information obtained from El Paso.

10. As indicated in Exhibit 2.10, Tab 2 of Annex B, Cascade projects that its average day interruptible gas requirements will be 71.2% of its total sales requirements. The following tabulation, taken from the books and records

of Cascade, shows the total number of therms of interruptible gas sold by Cascade during each of the years 1960 through 1963, the gross revenues derived from such sales for each of said years and the percentages of total therms of gas sold and of revenues from gas sales.

INTERRUPTIBLE GAS SALES-CASCADE

Year	Therms	% of Total	Revenues	% of Total
1963	273,659,694	76.7	$9,732,920	53.8
1962	238,991,824	76.8	8,532,594	54.5
1961	186,384,800	75.4	6,699,170	52.8
1960	151,936,561	78.1	5,575,998	54.6

The number of therms of interruptible gas sold on average for the four-year period 1960 through 1963 was 77.5% of total gas sales, and the revenues derived from such inter- [fol. 332] ruptible sales were 53.9% of total revenues. The projections of gas requirements in the Pacific Northwest over the next 5 years indicate (Exhibit 2.11, Tab 2 of Annex B) that under the El Paso Plan and assuming the supply projections therein, the average day curtailment of interruptible gas will change from 0% in 1967 to 23.5% in 1968 and will increase to 61% in 1969. Because of the heavy dependence of Cascade upon interruptible gas service relative to other customers in the Pacific Northwest Division (Exhibit 2.10, Tab 2 of Annex B) the impact of the anticipated shortage of interruptible gas will have a more adverse effect upon Cascade than upon other customers of New Company. Affiant has estimated that the consequences of the projected percentage curtailment could result in a reduction, in 1968, in net revenues (gross sales less cost of gas) in excess of $500,000, and in 1969, in excess of $1,400,000.

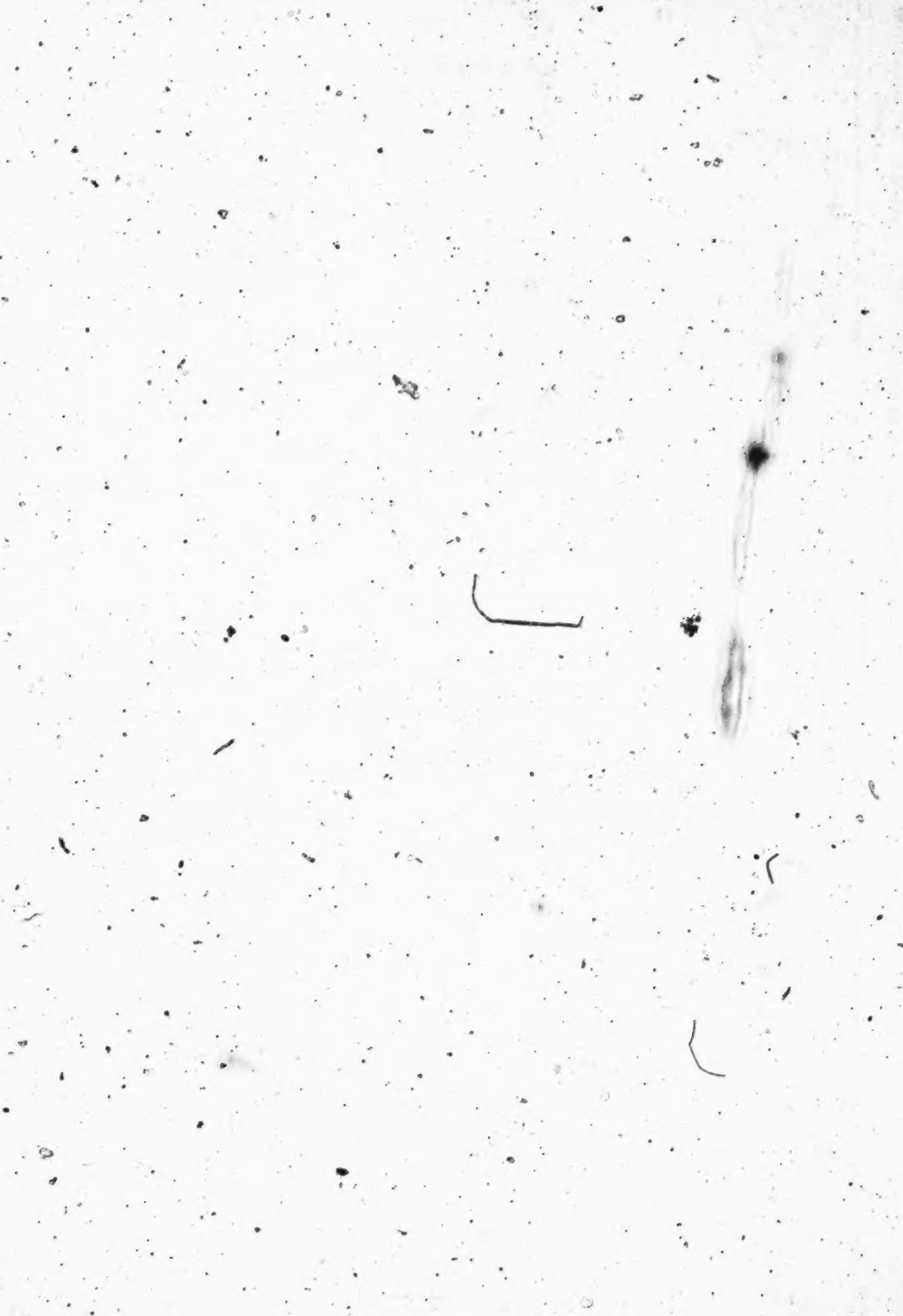
11. Affiant and other executive officers of Cascade have recently conferred with executive personnel of West Coast Transmission Company, Ltd., the transmission company

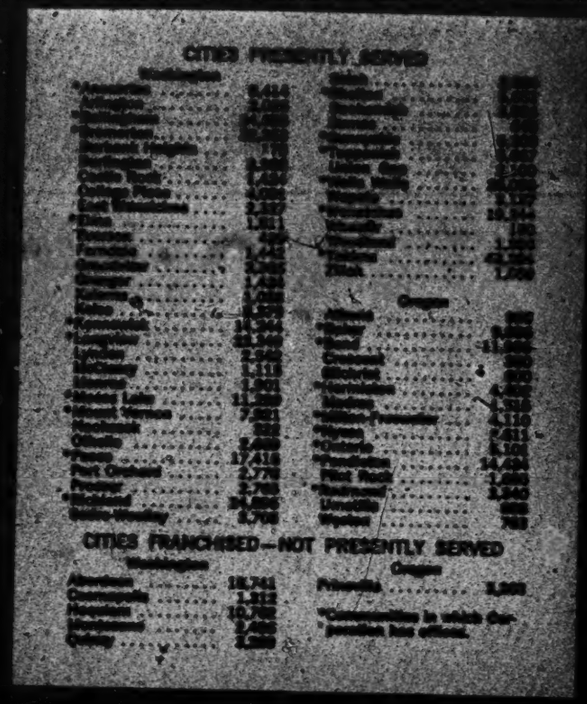
supplying British Columbia gas to El Paso at Sumas, Washington. Affiant is advised and therefore avers that West Coast Transmission Company, Ltd. is constructing an extension of its transmission line north of its existing gathering area in British Columbia to Fort Nelson, British Columbia and that such line will be completed by late 1964 or early 1965. The purpose of such extension is to provide an outlet to West Coast markets in Canada and the United States for reserves of natural gas in the Fort Nelson area. Affiant is advised and therefore believes that West Coast Transmission Company, Ltd. will shortly be in a position to deliver into said markets an additional supply of gas ap- [fol. 333] proximately 200 million cubic feet per day at prices not higher than those presently being charged for gas deliveries to distribution companies in British Columbia.

/s/ O. M. Jones

Subscribed and Sworn to before me this 17th day of November 1964.

/s/ Richard B. Hooper
Notary Public in and for the State of Washington, residing at Seattle





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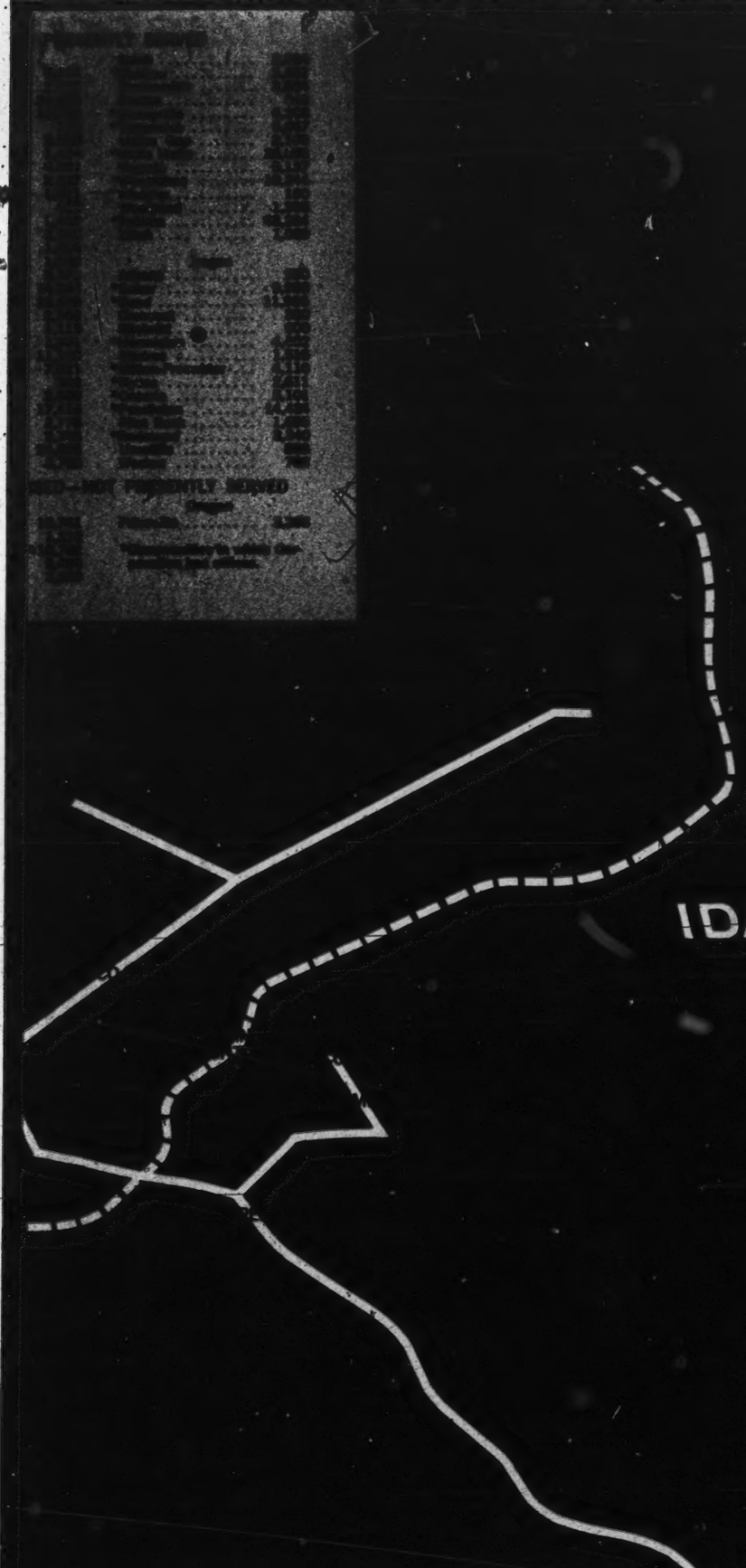


Highlights of 1963

	1963	1962
GROSS REVENUES	$18,085,585	$15,664,306
CUSTOMERS (end of year)	36,309	31,248
CONSTRUCTION EXPENDITURES	$ 7,918,270	$ 4,869,874
GROSS PLANT (end of year)	$42,886,475	$35,462,713
NET EARNINGS (after preferred dividends)	$ 1,311,156	$ 993,310
EARNINGS PER COMMON SHARE	$ 1.17	$ .90

BREMERTON SERVICE officially begins as Mayor Domstad turns valve. Aiding are Cascade officials (from left) C. Spencer Clark, chairman of the board; O. M. Jones, president; E. Niederer, Jr., vice president, and E. E. Roberson, district manager.

Board of Directors

DWIGHT C. BAUM
Los Angeles, California

C. SPENCER CLARK
Seattle, Washington

A. SHERMAN ELLSWORTH
Seattle, Washington

RALPH K. FARRIS
Vancouver, B.C., Canada

JEROME C. HUNSAKER, JR.
Boston, Massachusetts

HARRY B. JONES, JR.
Seattle, Washington

JACK E. JONES
Seattle, Washington

O. MARSHALL JONES
Seattle, Washington

STEWART MATTHEWS
Seattle, Washington

LESTER W. PETTIT
Seattle, Washington

ANTHONY YTURRI
Ontario, Oregon

Officers

C. SPENCER CLARK
Chairman

O. MARSHALL JONES
President

RALPH K. FARRIS
Vice-President

EDWARD NIEDERER, JR.
Vice-President

HAROLD B. MUNTON
Vice-President

RAYMOND J. GARRETT
Vice-President

WILLIAM E. WALL
Secretary

ARTHUR R. MITCHELL
Treasurer

TRANSFER AGENTS

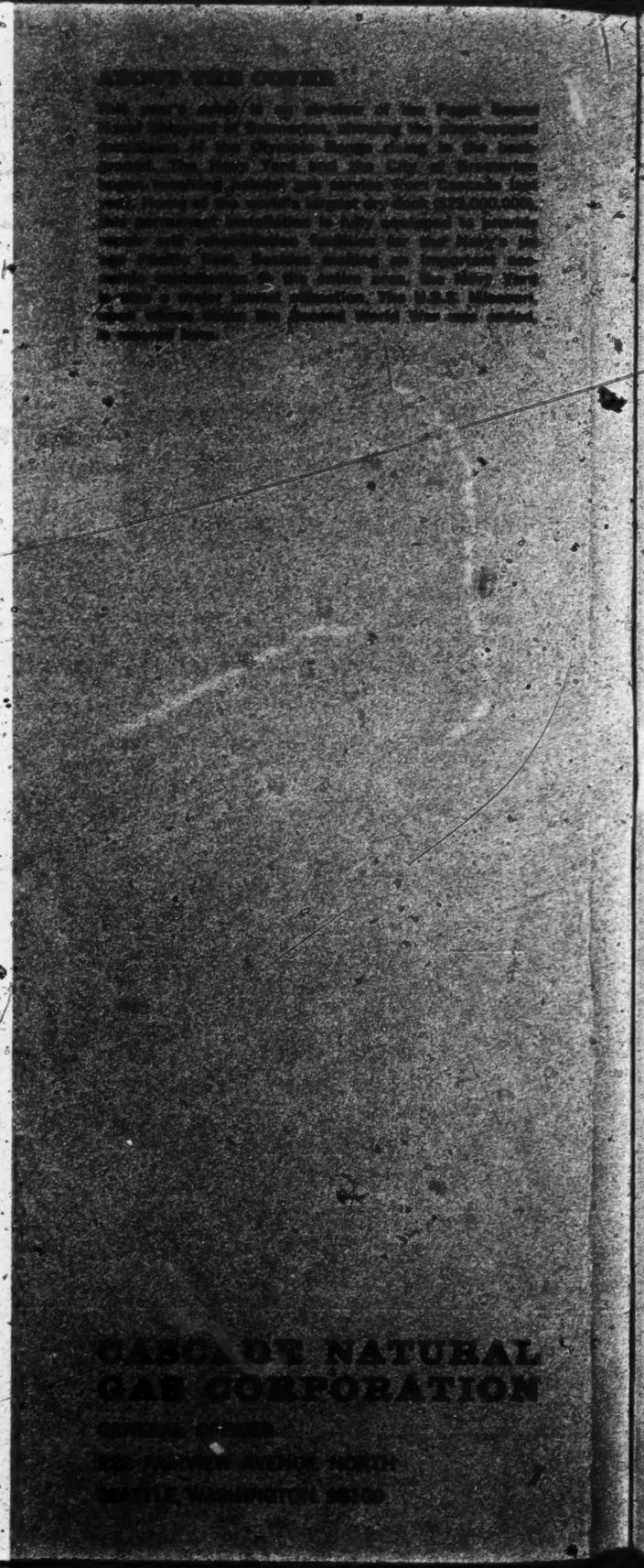
THE CHASE MANHATTAN BANK
1 Chase Manhattan Plaza, New York, New York 10015

SEATTLE TRUST AND SAVINGS BANK
804 Second Avenue, Seattle, Washington 98104

REGISTRARS

CHEMICAL BANK NEW YORK TRUST CO.
30 Broad Street, New York, New York 10015

NATIONAL BANK OF COMMERCE OF SEATTLE
Second Avenue at Spring Street, Seattle, Washington 98124



CASCADE NATURAL GAS CORPORATION

To the Stockholders:

1963 was the most successful in Cascade's eleven-year h income, gas sales, and construction activity. Also, an initial d was declared at year end.

Net income rose to $1,311,156 after provision for preferre This compares to $993,310, or 90c per share in the prior yea

Revenues in every category of service increased reflecting salesmen and the independent appliance dealers with whom t year reached a new high of $18,085,585, an improvement of new business pushed Cascade's gas purchases to a record 35 line "take" in 1962.

1963 was also a record year for construction activity. Six joined Cascade's system which today numbers fifty-nine cities a completely new distribution systems were installed. Conversion Shelton and the new Bremerton grid made Cascade an all-natur

The 1963 construction program enlarged Cascade's natura increased plant investment by $7,423,761, and generally was t gas was turned into Cascade's system eight years ago.

This year's construction program, budgeted at $6,500,00 transmission pipeline, which terminated in 1963 at Elma, will be and Hoquiam, bringing an additional 35,000 persons within Ca

While new properties will be added in 1964, as well as in come mainly from developing business available in the commu target will be that large segment in every community not yet appliances. This unserved market offers the greatest growth pot Cascade still serves less than 30% of the domestic and 35% present service area.

The outlook for Cascade remains bright. Only three of Ca as having defense oriented economies and one of these is Bre Shipyard featured on the cover of this Report. Elsewhere the e products; extractive industries, or agriculture—industries basic Cascade's service area is stable and diversified, offering a solid

Federal income tax loss carry forward has now been tot will reflect full income tax costs and some reduction in net ear net reduction, however, is not expected to disturb the quarter

Management is confident that with the continued support skilled and loyal employees, the steady progress that has mar into the future.

Respectfully

C. Spencer Clark

C. SPENCER CLARK
Chairman of the Board

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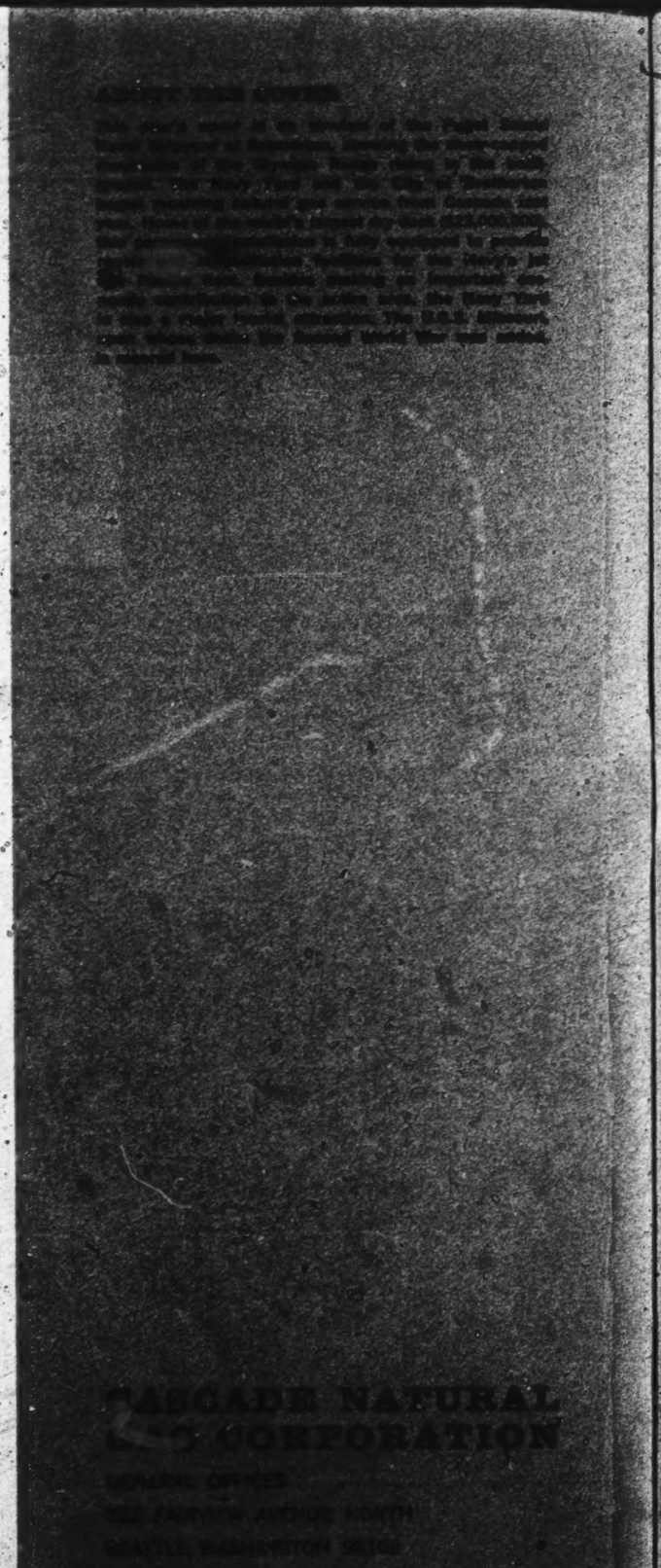

CASCADE NATURAL GAS CORPORATION

GENERAL OFFICES
323 FIFTH AVENUE NORTH
SEATTLE, WASHINGTON 98109

To the Stockholders:

1963 was the most successful in Cascade's eleven-year history. New heights were achieved in net income, gas sales, and construction activity. Also, an initial dividend on the Company's common stock was declared at year end.

Net income rose to $1,311,156 after provision for preferred dividends, or $1.17 per common share. This compares to $993,310, or 90c per share in the prior year.

Revenues in every category of service increased reflecting the successful selling efforts of Company salesmen and the independent appliance dealers with whom they closely work. Gross revenues for the year reached a new high of $18,085,585, an improvement of 15.5% over 1962. The servicing of this new business pushed Cascade's gas purchases to a record 356,867,559 therms, 15% above the pipeline "take" in 1962.

1963 was also a record year for construction activity. Six Washington and two Oregon communities joined Cascade's system which today numbers fifty-nine cities and towns. In seven of these communities, completely new distribution systems were installed. Conversion of the all-welded propane-air system in Shelton and the new Bremerton grid made Cascade an all-natural gas distribution company.

The 1963 construction program enlarged Cascade's natural gas service territory by 45,000 people, increased plant investment by $7,423,761, and generally was the most extensive in scope since natural gas was turned into Cascade's system eight years ago.

This year's construction program, budgeted at $6,500,000, is nearly as large. The Grays Harbor transmission pipeline, which terminated in 1963 at Elma, will be extended through Montesano to Aberdeen and Hoquiam, bringing an additional 35,000 persons within Cascade's service area.

While new properties will be added in 1964, as well as in the years that follow, future growth will come mainly from developing business available in the communities now being served. The basic sales target will be that large segment in every community not yet using gas or using it in only one or two appliances. This unserved market offers the greatest growth potential. Despite the sales gains of the past, Cascade still serves less than 30% of the domestic and 35% of the commercial business within its present service area.

The outlook for Cascade remains bright. Only three of Cascade's communities could be described as having defense oriented economies and one of these is Bremerton, home of the Puget Sound Naval Shipyard featured on the cover of this Report. Elsewhere the economic base is founded on trade, wood products, extractive industries, or agriculture—industries basic to the region. The general economy of Cascade's service area is stable and diversified, offering a solid basis for balanced growth.

Federal income tax loss carry forward has now been totally utilized. Operating results for 1964 will reflect full income tax costs and some reduction in net earnings per share is inevitable. Anticipated net reduction, however, is not expected to disturb the quarterly common dividend of 12½¢ per share.

Management is confident that with the continued support of our shareholders and dedication of our skilled and loyal employees, the steady progress that has marked our Company's history will continue into the future.

Respectfully submitted,

C. Spencer Clark — C. SPENCER CLARK, Chairman of the Board

O. Marshall Jones — O. MARSHALL JONES, President

SALES

Sales efforts in 1963 produced gratifying results. Nearly 16,500 gas-fired appliances were connected to Company lines, more than in any prior year and 16.5% more than in 1962. New customers were also acquired at near record levels. In total, over 5,000 were added, representing a gain of 16% over 1962.

Gas-fired appliance installations by dealers during the first two months of 1964 numbered 2,061 and represented an increase of 34.6% over the same two months of 1963. Some part of this increase is attributable to the "open" winter which permitted continuation of construction activity and some to a generally healthy economy. Mostly, however, it is the direct result of a new and liberalized service line extension rule.

The new rule represents an advance from a stereotyped industry practice of allowing a fixed amount of free service line footage without regard to the prospective revenue to be derived. This policy is in sharp contrast to the general practice of relating main extension footage directly to anticipated revenue. There is no logical reason for a difference in approach to construction allowances. Nor is there any logical reason why free service line provided should stop at an arbitrary meter location. Our product is only useful to our customer at the burner tip —not at the meter.

Cascade's new service line extension rule keys the amount of free service line to the BTU input of the customer's total installed gas-fired equipment and recognizes that a fuel service is being provided to the point of use rather than the simple delivery of a fuel to a point which requires further action by the customer to bring it to a location where he can use it.

The instant popularity of this concept of the underlying obligation of a public utility to provide service is gratifying. It is based on sound economic grounds and is already proving to be a valuable sales tool.

CONSOLIDATED EARNINGS PER SHARE

Consolidated earnings per share include for each year the operations of the predecessor companies, Eastern Oregon Natural Gas Company, Consumers Gas Corporation and Pacific Natural Gas Co.

REVENUE

Last year's increased sales were reflected in additional revenue in all categories of service. Gross revenue for the year reached a new high of $18,085,585, an increase of 15.5% over 1962. By categories of service, Residential Sales amounted to $3,838,766 (up 20.4%), Commercial Sales, $3,431,699 (up 15.6%), Industrial Firm Sales, $1,247,776 (up 9.5%), and Industrial Interruptible Sales, $9,567,344 (up 14.3%).

HEATING DEGREE DAYS

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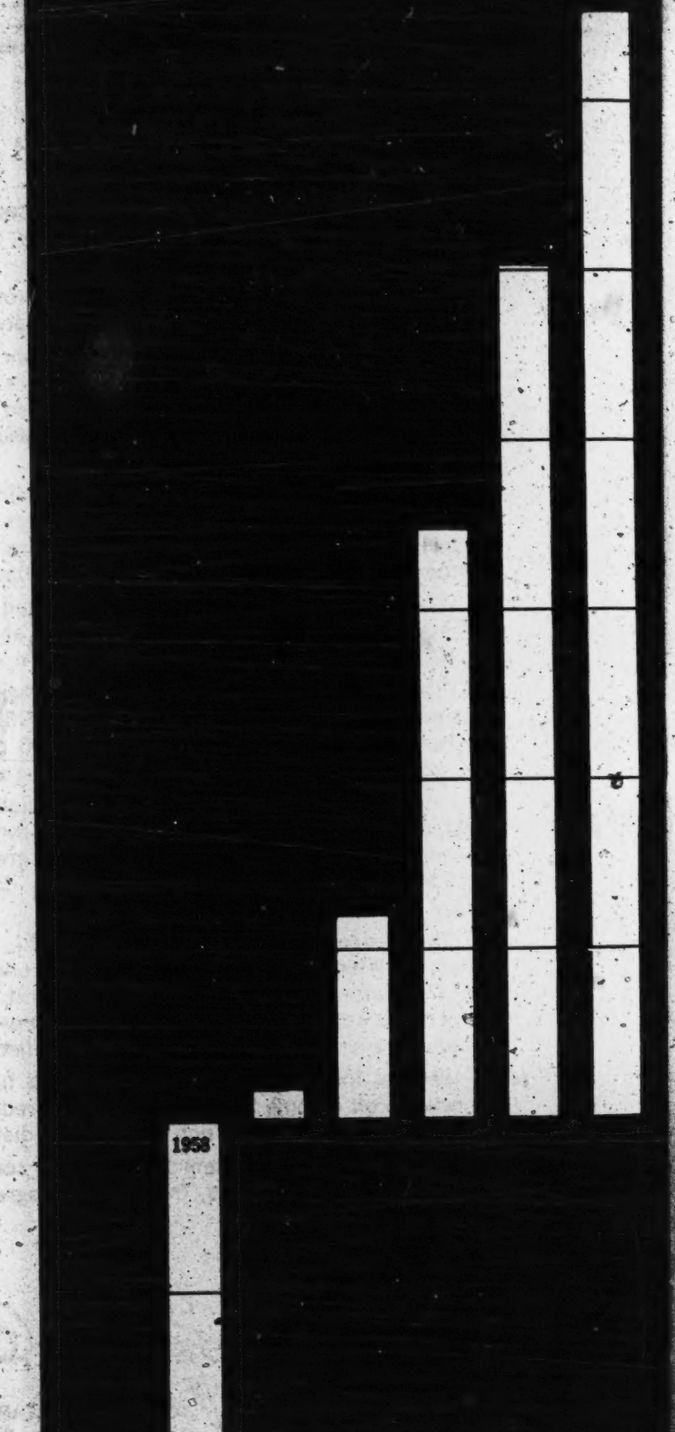

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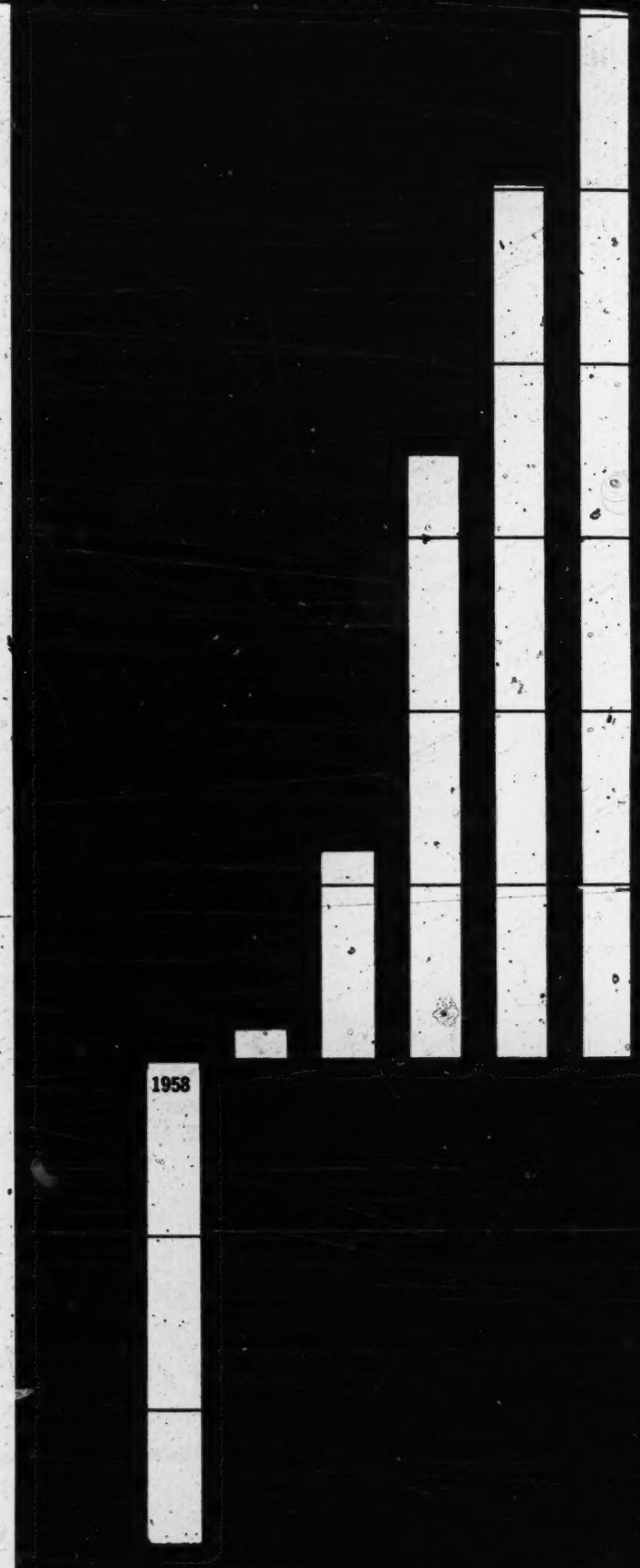

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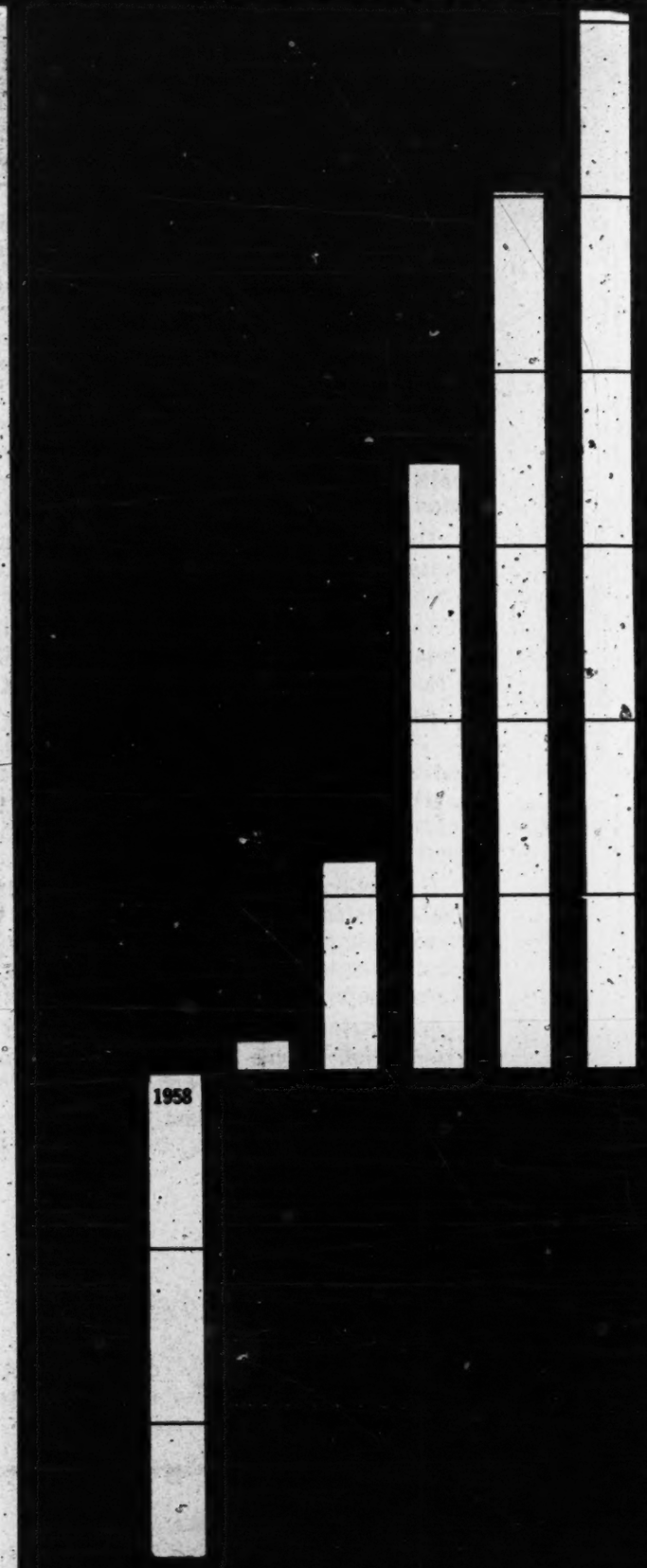

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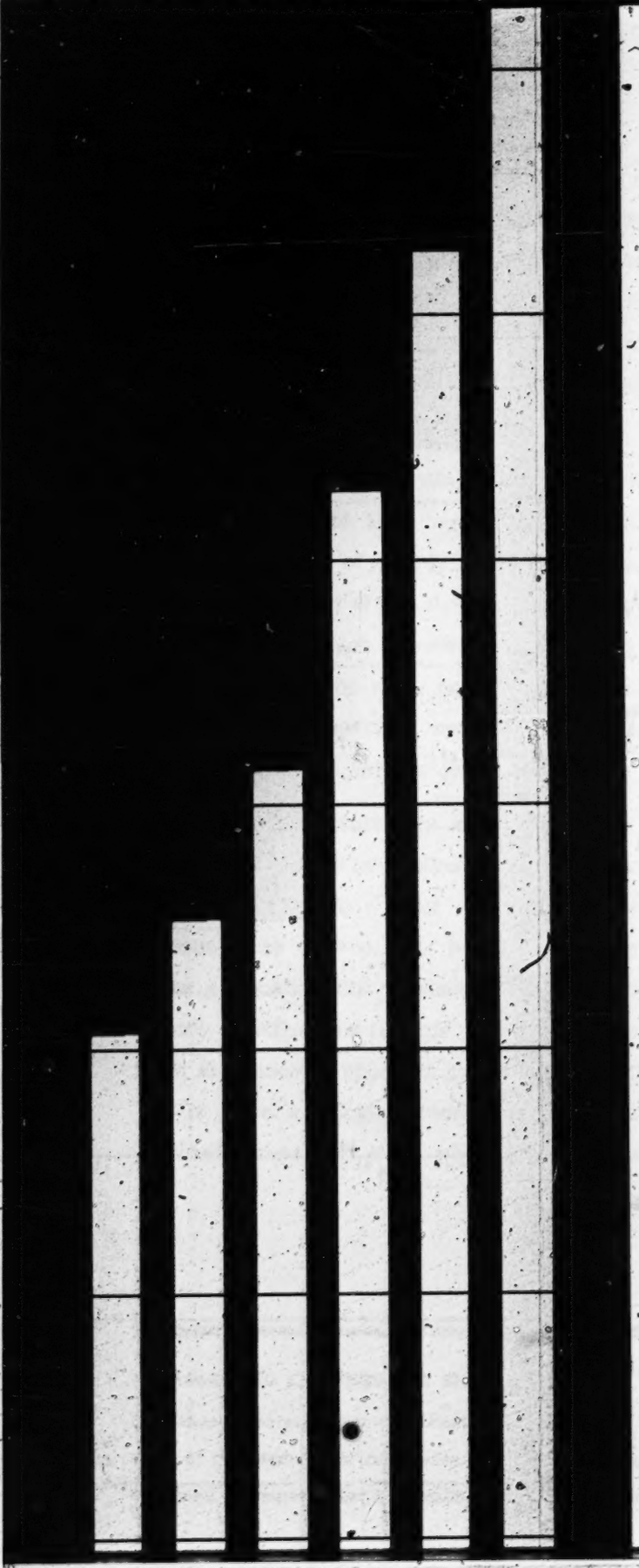

COST OF GAS AND SUPPLY

The cost of gas to Cascade may be expected to remain stable until, at the earliest, November 1965, barring any increase in well-head prices to El Paso Natural Gas Company, Cascade's sole supplier. This results from a settlement agreement with El Paso, approved by the Federal Power Commission, whereby increased rates imposed in 1957 by El Paso's predecessor company and passed on by Cascade to its customers the following year, become permanent and no longer subject to refund. The only possibility of a rate increase to Cascade before November 1965 would be higher gas costs to El Paso. In assessing the likelihood of this occurrence, it is significant that Federal regulation in recent years has been in the direction of "holding the line" on gas producer rates. The prospect for continued stability of gas costs beyond November 1965 appears favorable.

The supply of natural gas, always a matter of prime importance, remained ample during 1963. No curtailment of service was necessary and all interruptible customers remained on stream throughout the year. El Paso, which supplies Cascade's service area from three separate sources—each supported by vast reserves—has assured continued availability for another ten years of interruptible gas service for resale by Cascade to industrial consumers.

FINANCE

In 1963 Cascade sold $5,818,700 of Convertible Debentures with Stock Purchase Warrants. Full details of this financing were set out in the 1962 Annual Report. In addition, a short-term bank loan of $1,000,000 was negotiated and fully repaid in early 1964 from internally generated funds.

FINANCING – 1964

The Company has made arrangements to place, with a limited number of institutional investors, $6,000,000 principal amount of 5⅛% First Mortgage Bonds, Series E, due 1984. Proceeds from the sales of these Bonds will be available for the Company's 1964 construction program.

Company officers have been invited to address both the Los Angeles and the New York Societies of Security Analysts in 1964. These invitations are encouraging evidence of increasing interest in Cascade's future by important segments of the nation's financial community.

CUSTOMERS

Total customers have increased 136%, from 15,369 in 1958 to 36,309 in 1963, averaging better than 5,000 a year for the latest three years.

GROSS PLANT

Investment in gross plant amounted to nearly $43,000,000 at the end of 1963. Communities served have increased from 23 in 1958 to 59 in 1963.

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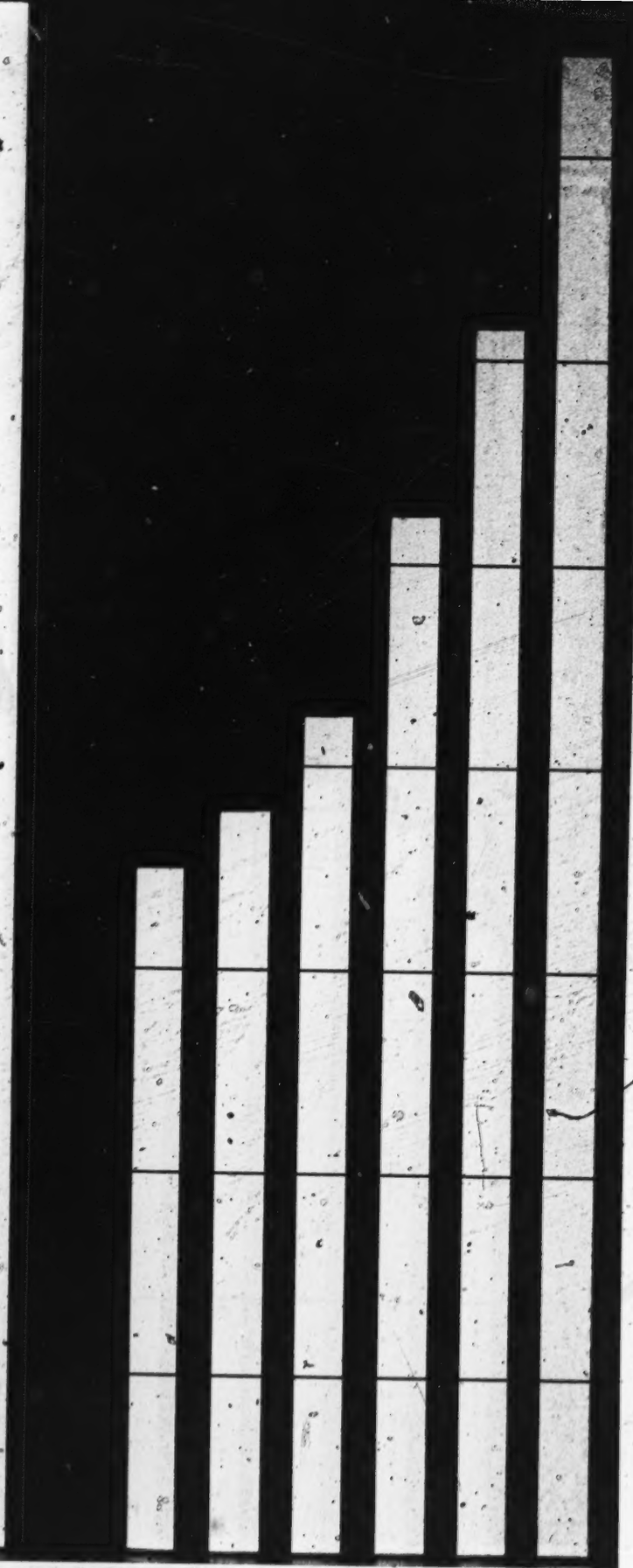

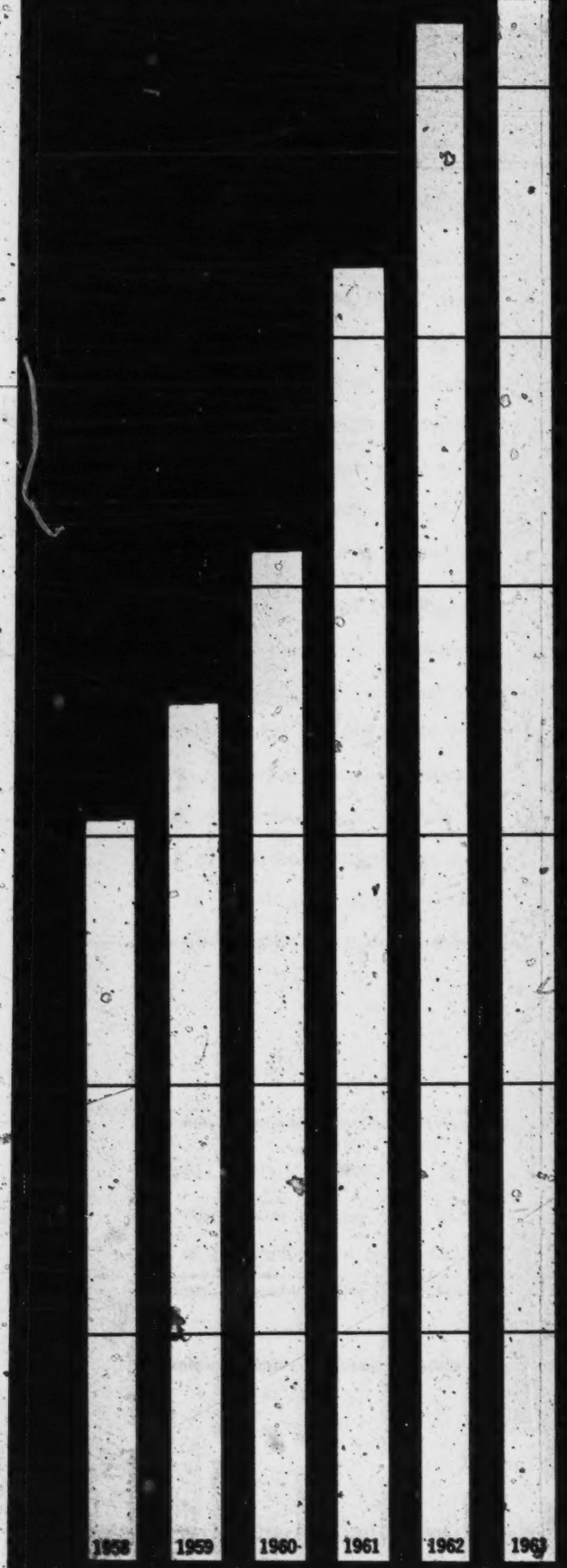

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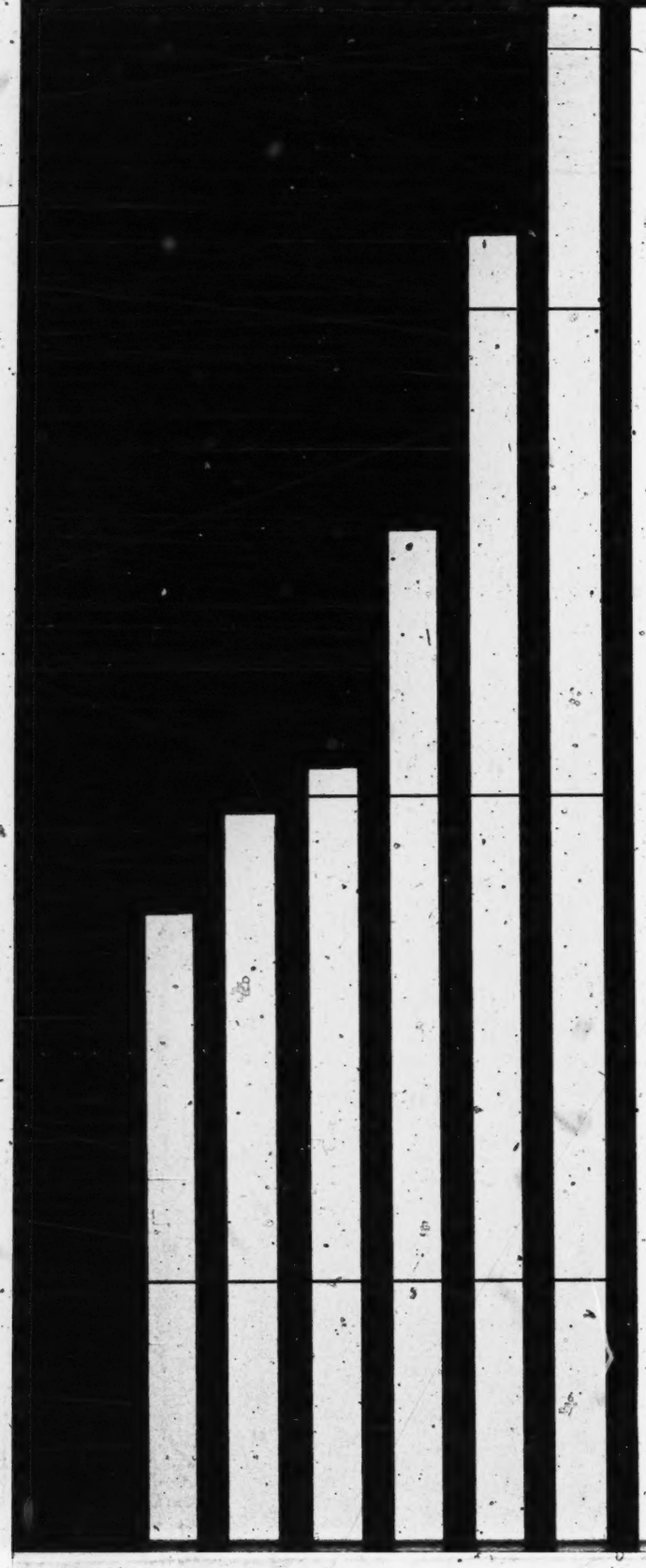


DIVIDENDS

The first dividend on the 1,122,769 outstanding shares of the Company's $1.00 par value common stock was declared December 31, 1963. Amounting to 12½c a share, the dividend was paid February 21, 1964, to shareholders of record, February 7, 1964.

Quarterly dividends on the 332,023 outstanding shares of the Company's 55c Cumulative Preferred Stock were regularly declared and paid during the year.

INTERNAL OPERATIONS

Several new programs, aimed at improving internal operations, were initiated last year. Undoubtedly the most impressive was the transfer of customer accounting to modern data processing equipment. Statements to customers may now be swiftly calculated and mailed, reducing the age of accounts receivable. Among many capabilities, the new equipment provides selective statistics for use by the sales department in developing more add-load business from existing customers. The new equipment makes assumption by the Company of its own transfer agent functions both practicable and economic and Cascade's nearly 6,200 Common and 1,200 Preferred Shareholders will soon be able to deal directly with the Company when transferring their share certificates. This function, along with the disbursement of dividends, had been accomplished in the past by agents.

GROSS REVENUE

Gross revenues have increased 107% in five years, from $8,750,000 in 1958 to over $18,000,000 in 1963.

CONSTRUCTION

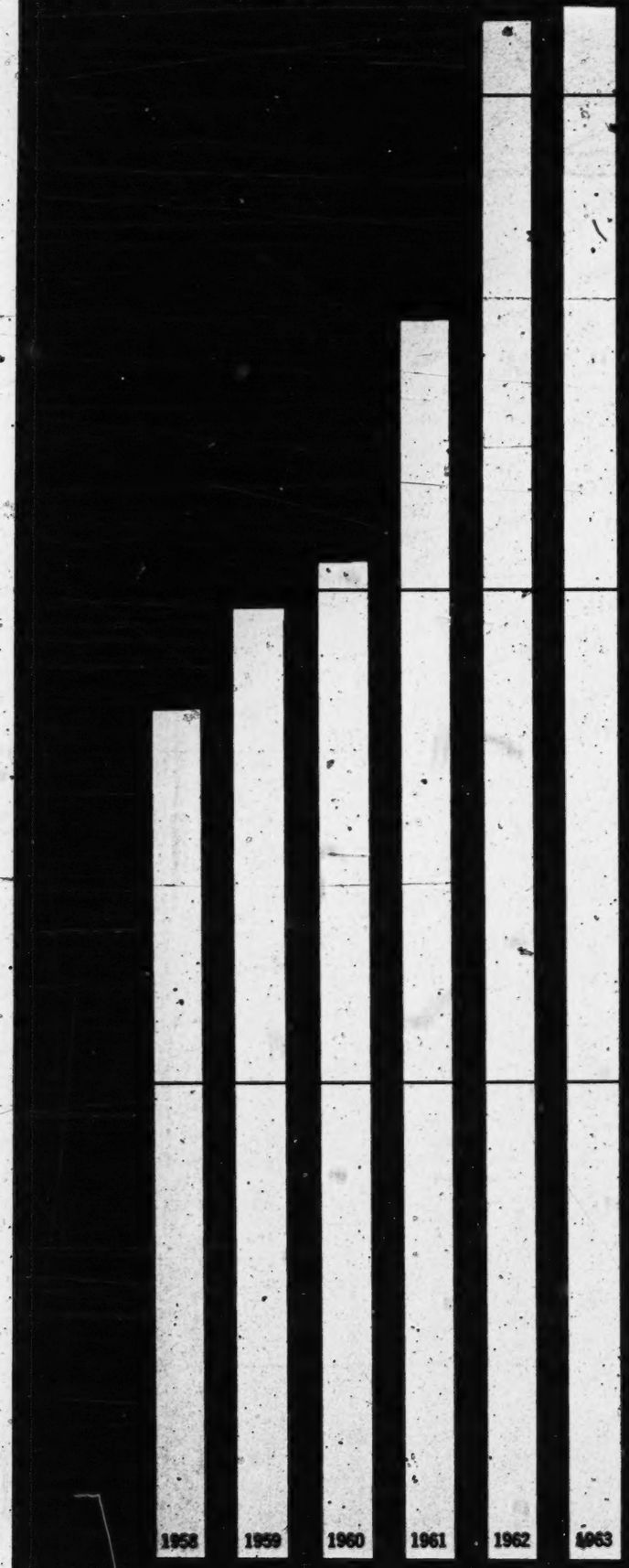
Construction during 1963 exceeded anything undertaken by the Company since the arrival of natural gas. Seven modern natural gas distribution systems were installed; the last of Cascade's manufactured gas operations were converted to natural gas; and over forty-five miles of high pressure transmission pipeline was constructed and activated.

The latest additions to Cascade's natural gas system are Bremerton, Elma, Othello, Port Orchard and Sumas, Washington; and Crescent and Umatilla, Oregon. Including Shelton, which was converted from manufactured to natural gas operations last year, these new communities have a combined population of over 45,000 persons.

Much of 1963's construction program was devoted to building long distance transmission facilities to bring gas to several of these new communities located a considerable distance from the main pipeline. The longest was a thirty-five-mile pipeline, eight inches in diameter, laid between the terminus of El Paso's Kitsap line near Shelton, across some of the most rugged terrain in the Northwest, to Bremerton.

Another eight-inch pipeline, five miles long, was built between McCleary, Washington, and Elma. This line is the first segment of Cascade's Grays Harbor pipeline.

In Eastern Washington, across entirely different topography, Cascade built a twelve-mile, four-inch pipeline to



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In Eastern Washington, across entirely different topography, Cascade built a twelve-mile, four-inch pipeline to supply the new distribution system in Othello. Other lines

1 Pictured are recipients of service awards presented at the annual fall sales meeting held in Seattle on December 6, 1963. Presentation of awards was made by C. Spencer Clark, chairman of the Board of Directors, extreme right. Back row, left to right, are Ken Weaver, Mount Vernon district manager; Ed Roberson, Bremerton district manager; Keith Shipman, Bend head serviceman; Jay Smith, Bellingham superintendent of construction; Nick Hollamon, Bend district manager; Harold Floyd, Yakima district manager; Charles Coleman, Redmond local manager, and Clark. Front row, left to right, are Martin Ford, assistant to the president; Edwin Reinhardt, Walla Walla head serviceman, and Kirby Grubb, Grays Harbor district manager. Coleman and Grubb received five-year service awards while all others received ten-year awards.

2 Sixty-foot lengths of pipe heading for the Bremerton-Shelton transmiss site. The use of sixty-foot lengths is believed to be a "first" in pipeli resulted in considerable savings. 3 "Rough Going." A typical construct route of Cascade's Shelton-to-Bremerton eight-inch transmission line. 4 A gas in the Northwest. Clean, automatic natural gas heaters replace oil smu Washington, pear orchard, ending smog and leaving vegetation free of 5 This primary regulator and measurement station marks the terminus pipeline off of which Shelton-Port Orchard and Bremerton are served.

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2 Sixty-foot lengths of pipe heading for the Bremerton-Shelton transmission line construction site. The use of sixty-foot lengths is believed to be a "first" in pipeline construction and resulted in considerable savings. 3 "Rough Going." A typical construction scene along the route of Cascade's Shelton-to-Bremerton eight-inch transmission line. 4 A new use for natural gas in the Northwest. Clean, automatic natural gas heaters replace oil smudge pots in a Zillah, Washington, pear orchard, ending smog and leaving vegetation free of soot and oil film. 5 This primary regulator and measurement station marks the terminus of Cascade's Kitsap pipeline off of which Shelton-Port Orchard and Bremerton are served.

to bring gas to Umatilla, Sumas and Shelton were also laid. Altogether, more transmission facilities were constructed by Cascade in 1963 than in any prior year.

Not all 1963 construction involved new distribution systems and long distance pipelines. In every community served, mains and customer service lines were laid to meet the growing demands of old and new customers alike. In all, over 185 miles of main and 65 miles of service were added to Cascade's plant in 1963.

CONSTRUCTION - 1964

Construction activity planned for 1964 will rival 1963's in magnitude. More than $6,500,000 has been budgeted to be expended on plant expansion.

Nearly $400,000 will be spent in 1964 to expand the distribution system in Bellingham to serve two attractive and growing districts. Almost as much has been earmarked for distribution facilities in other areas to keep pace with the trend toward suburban development.

A large portion will be applied to the extension of the Grays Harbor pipeline in Washington State from Elma, through Montesano, to Aberdeen and Hoquiam. Originally scheduled as part of 1963's program, work on this pipeline and installation of natural gas distribution systems in the three towns was delayed into 1964 because of unfavorable weather conditions. Collectively these communities have a population in excess of 35,000 persons. Supported by a stable economy of logging, lumbering, wood manufacturing, fishing and waterborne commerce, each will make a valuable contribution to Cascade's development.

Statement of Cash Flow

	Year Ended December 31, 1963	
Cash at January 1, 1963		$ 732,183
Additions:		
Net income for the year	$ 1,498,656	
Depreciation of utility plant and amortization of debt discount and expense and natural gas conversion costs	931,535	
	$ 2,430,191	
Proceeds from—		
5¼% Convertible Subordinated Debentures and warrants	5,439,707	
Notes payable	1,000,000	
Sale of 17,000 shares of common stock under Key Employees' Stock Ownership Plan	117,551	
Increase in accounts payable	602,496	9,589,945
		$10,322,128
Deductions:		
Additions to utility plant and construction work in progress	$ 7,441,114	
Redemption of long-term debt	1,741,061	
Payment of preferred dividends	187,500	
Redemption of preferred stock	90,005	
Other items—net	228,859	9,688,539
Cash at December 31, 1963		$ 633,589

Independent Auditors' Report

Board of Directors
Cascade Natural Gas Corporation
Seattle, Washington

February 18, 1964

We have examined the accompanying consolidated balance sheet of Cascade Natural Gas Corporation and subsidiary as of December 31, 1963 and the related statements of net earnings, additional paid-in capital, and retained earnings for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the consolidated financial position of Cascade Natural Gas Corporation and subsidiary at December 31, 1963 and the consolidated results of operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Touche, Ross, Bailey & Smart

Certified Public Accountants

Cascade Natural Gas

Consolidated

ASSETS

	December 31, 1963	1962
UTILITY PLANT, at cost	$39,943,963	$34,684,444
Less accumulated depreciation	4,542,175	3,923,315
	$35,401,788	$30,761,129
Construction work in progress	2,942,511	778,269
	$38,344,299	$31,539,398
CURRENT ASSETS:		
Cash, including time deposits of $453,243 in 1963	$ 633,589	$ 732,183
Accounts receivable, less allowance of $67,516 in 1963 and $60,037 in 1962 for doubtful accounts	2,995,974	2,616,917
Materials, supplies, and fuel	349,421	387,996
Prepaid expenses	127,342	125,831
TOTAL CURRENT ASSETS	$ 4,106,326	$ 3,862,927
DEFERRED DEBITS:		
Unamortized debt discount and expense	$ 854,627	$ 981,564
Unamortized natural gas conversion costs	833,236	733,698
Preliminary survey and investigation charges	723,552	76,568
Other deferred debits	65,640	59,164
	$ 2,477,055	$ 1,850,994
	$44,927,680	$37,253,319

See notes to consolidated financial statements

Corporation and Subsidiary

Balance Sheet

STOCKHOLDERS' INVESTMENT AND LIABILITIES

	December 31, 1963	1962
STOCKHOLDERS' INVESTMENT:		
Preferred stock, 55¢ cumulative, without par value (liquidating value $10 a share)— Authorized, 340,997 shares Issued and outstanding 332,023 shares in 1963 and 340,997 shares in 1962	$ 3,320,230	$ 3,409,970
Common stock, par value $1 a share— Authorized, 2,000,000 shares Issued and outstanding, 1,122,769 shares in 1963 and 1,105,769 shares in 1962	1,122,769	1,105,769
Additional paid-in capital	5,156,464	5,056,178
Retained earnings (accumulated loss) since August 1, 1955	1,055,705	(115,105)
	$10,655,168	$ 9,456,812
LONG-TERM DEBT	$27,710,700	$23,643,061
CURRENT LIABILITIES:		
Notes payable	$ 1,032,000	$ 121,100
Accounts payable	2,369,606	1,767,110
Dividends payable on common stock, February 21, 1964	140,346	
Salaries, wages, and amounts withheld from employees	138,729	115,727
Property, payroll, and excise taxes	621,971	499,395
Interest payable	298,089	319,712
Customers' advances and deposits	381,705	324,015
Current maturities on long-term debt	662,000	652,000
TOTAL CURRENT LIABILITIES	$ 5,644,446	$ 3,799,059
DEFERRED CREDITS:		
Unamortized premium on Convertible Subordinated Debentures	$ 543,680	$
Other, principally customer advances	373,686	354,387
	$ 917,366	$ 354,387
	$44,927,680	$37,253,319

Consolidated Statement of Net Earnings

	Year ended December 31, 1963	1962
Operating revenues:		
Gas	$18,085,585	$15,664,306
Other	186,492	119,226
	$18,272,077	$15,783,532
Cost of operations:		
Gas purchases	$11,578,929	$10,041,565
Operating expenses	1,828,754	1,580,942
Depreciation	859,431	721,749
Amortization of natural gas conversion costs	52,407	51,642
General taxes	1,126,783	942,624
	$15,446,304	$13,338,522
EARNINGS FROM OPERATIONS	$ 2,825,773	$ 2,445,010
Interest income	94,508	15,604
	$ 2,920,281	$ 2,460,614
Other expenses:		
Interest	$ 1,552,816	$ 1,221,951
Amortization of debt premium, discount and expense — net	19,697	119,980
Portion of debt costs charged to construction work in progress	(166,049)	(77,015)
Miscellaneous	15,161	12,255
	$ 1,421,625	$ 1,277,171
NET EARNINGS	$ 1,498,656	$ 1,183,443
Special charge:		
Writeoff of unamortized debt expense applicable to notes redeemed before maturity		59,659
NET EARNINGS AND SPECIAL CHARGE	$ 1,498,656	$ 1,123,784

See notes to consolidated financial statements

Consolidated Statement of Additional Paid-in Capital

	Year ended December 31, 1963	1962
Balance at January 1	$ 5,056,178	$ 5,047,698
Excess of amounts received over par value of common stock issued under Key Employees' Stock Ownership Plan	100,551	
Excess of purchase price over stated value of preferred stock acquired in accordance with redemption provisions	(265)	25
Acquisition of minority interests' share of additional paid-in capital of Pacific Natural Gas Co.		8,455
Balance at December 31	$ 5,156,464	$ 5,056,178

See notes to consolidated financial statements

Consolidated Statement of Retained Earnings

	Year ended December 31, 1963	1962
Balance at January 1 (accumulated loss)	$ (115,105)	$ (1,034,077)
Net earnings for the year including special charge of $59,659 for 1962	$ 1,498,656	$ 1,123,784
Dividends:		
Preferred stock, $.55 a share	(187,500)	(190,133)
Common stock, $.125 per share	(140,346)	
	$ 1,170,810	$ 933,651
	$ 1,055,705	$ (100,426)
Acquisition of minority interests' share of accumulated loss and writeoff of organization expense in the liquidation and merger of Pacific Natural Gas Co.		(14,679)
Balance at December 31 (accumulated loss)	$ 1,055,705	$ (115,105)

See notes to consolidated financial statements

Notes to Consolidated Financial Statements

Year Ended December 31, 1963

PRINCIPLES OF CONSOLIDATION:

The consolidated financial statements include the accounts of Cascade Natural Gas Corporation and Cascade Building Co., a wholly-owned subsidiary.

ACQUISITION OF NET ASSETS OF MAGNA PIPE LINE COMPANY LIMITED:

On February 8, 1963 the Company issued $5,818,700 of its 5¼% Convertible Subordinated Debentures and warrants for the purchase of 93,750 shares of common stock in exchange for all of the assets, subject to the liabilities of Magna Pipe Line Company Limited. Assets acquired consisted of cash and short-term investments aggregating $5,985,093, feasibility and engineering studies and designs of $892,750, and other assets totaling $137,163, and the liabilities assumed amounted to $392,716.

The excess of net assets received over debentures issued and expenses incurred in issuing the debentures was recorded as premium on the Convertible Subordinated Debentures.

INCOME TAXES:

The Company has elected to claim, for Federal income tax purposes, depreciation on certain additions computed by an accelerated method, and natural gas conversion costs in the year incurred. As a result, depreciation and natural gas conversion costs deducted for Federal income taxes exceeds the amount charged on the books. Had this "flow-through" practice not been followed, substantially all of the Company's 1963 net earnings would have been subject to Federal income taxes.

The Federal income tax returns of the Company and its subsidiary have not been examined. Although the amount of operating loss carryforward of the Company is not presently determinable, it is believed that no provision for Federal income taxes is required for the current year by reason of the operating loss carryforward and the "flow-through" practice.

An investment credit carryover aggregating $345,000 is available at December 31, 1963 to reduce future Federal income tax payments.

LONG-TERM DEBT:

	Long-Term	Current maturities
First Mortgage Bonds—		
4⅞% Series A, due April 1, 1976	$ 8,010,000	$450,000
4⅞% Series B, due April 1, 1978	568,000	30,000
6% Series C, due October 1, 1978	2,074,000	142,000
5¾% Series D, due April 1, 1982	2,500,000	
First Mortgage Notes—		
6%, due October 1, 1982	740,000	40,000
Subordinated debt—		
6% Subordinated Notes, due April 1, 1975	2,000,000	
5½% Subordinated Debentures, due 1983	6,000,000	
5¼% Convertible Subordinated Debentures, due 1970	5,818,700	
	$27,710,700	$662,000

The First Mortgage Bonds and the First Mortgage Notes are collateralized by first mortgages on substantially all the properties of the Company and its subsidiary.

Under terms of the First Mortgage Bonds, sinking fund payments of $622,000 will be due in 1964 and $742,000 in 1965. Thereafter, sinking fund payments will increase at an annual rate of $10,000 (except $20,000 in 1973) through 1975 with subsequent payments of $2,652,000 due in 1976 and $1,758,000 due between 1977 and 1982.

The 6% First Mortgage Notes are payable at the annual rate of $40,000. The 6% Subordinated Notes are payable at the annual rate of $160,000 commencing April 1, 1965. The 5½% Subordinated Debentures are payable at the annual rate of $300,000 commencing May 15, 1967. There are no sinking fund requirements for the 5¼% Convertible Subordinated Debentures.

The first mortgage and deed of trust relative to the bonds and the indentures for the subordinated debt restrict the Company and its subsidiary as to property dispositions, indebtedness, payment of cash dividends on common stock, and other matters. Under these restrictions approximately $710,000 of retained earnings at December 31, 1963 are not available for the payment of dividends.

Notes to Consolidated Financial Statements

PREFERRED STOCK:

The Company must purchase or redeem annually 8,974 shares of preferred stock through November 1, 1990 and 17,948 shares thereafter at $10 a share plus accrued dividends. Additional redemptions can be made only if all cumulative dividends on preferred stock have been paid and all restrictive provisions of the long-term indebtedness agreements have been satisfied. At December 31, 1963 the annual redemption provisions have been satisfied.

STOCK OPTIONS:

The Company received necessary approval during the year for the issuance of options to purchase 17,000 shares of common stock, under the Key Employees' Stock Ownership Plan. An additional option for the purchase of 1,000 shares of common stock was not approved and was canceled. The present status of the options is summarized as follows:

Shares optioned			Options exercised in 1963	
Date of grant	Number	Price per share	Shares issued	Proceeds
August 28, 1958	10,000	$ 6.00	10,000	$ 60,000
April 29, 1959	5,000	8.14	5,000	40,700
July 17, 1959	2,000	8.55	2,000	17,100
January 24, 1964	8,000*	14.50		
	25,000		17,000	$117,800

*Expires five years from option date and must be approved by Washington and Oregon regulatory commissions.

The Company has agreed to issue 7,500 shares of its common stock at $5.00 a share (aggregate $37,500) in fulfillment of an option agreement issued by a predecessor company. A request for approval of the option agreement is pending before the Oregon Public Utility Commissioner. The option expires six years after the date of such approval.

COMMON STOCK:

At December 31, 1963, 656,559 shares of common stock are reserved as follows:

	Number of shares	Purchase, conversion or option price per share
Stock purchase warrants expiring as follows:		
May 31, 1967	90,000	$15.00 to May 31, 1965 $16.25 thereafter
December 31, 1967	93,750	$15.00 to December 31, 1964 $16.50 thereafter
April 28, 1970	50,000	$ 8.00 to April 28, 1965 $10.00 thereafter
Conversion of 5¼% Convertible Subordinated Debentures	407,309	$14.29
Stock options:		
Key Employees' Stock Ownership Plan	8,000	$14.50
Assumed from predecessor company	7,500	$ 5.00
	656,559	

EMPLOYEES' RETIREMENT PLAN:

Under the Company's non-contributory retirement plan, a charge of $42,533 (including past service) has been made in the accounts for the year 1963. Unfunded past service costs were estimated by the Company's actuary to be $168,000 at December 31, 1963.

PENDING LITIGATION:

The Ted Price Construction Company suit against the Company and Fish Engineering Corporation in the approximate amount of $2,300,000, for damages arising out of alleged breach of contract for construction of major gas distribution systems during 1956, is still pending. Although continued defense of the action is expected to involve substantial time, the Company has been advised by its general counsel that the action is without merit.

Consolidated Operating Statistics

(Pacific Natural Gas Co., Eastern Oregon Natural Gas Company and Consumers Gas Corporation Included for All Years)

	1963	1962	1961	1960	1959	1958
Sales in Therms:						
Residential	26,349,803	21,681,292	16,742,456	13,528,567	10,400,648	9,252,448
Commercial	37,008,512	32,401,683	28,704,989	25,465,330	18,807,221	14,391,070
Industrial	293,509,244	257,041,418	201,787,854	155,474,040	168,088,796	162,373,772
	356,867,559	311,124,393	247,235,299	194,467,937	197,296,665	186,017,290
Revenue:						
Residential	$ 3,838,766	$ 3,186,978	$ 2,517,077	$ 2,023,954	$ 1,665,970	$ 1,263,208
Commercial	3,431,699	2,967,873	2,654,655	2,354,994	1,788,833	1,404,695
Industrial	10,815,120	9,509,455	7,504,689	5,841,946	6,318,311	6,084,880
	$18,085,585	$15,664,306	$12,676,421	$10,220,894	$ 9,773,114	$ 8,752,783
Customers (end of year):						
Residential	29,453	25,071	20,838	16,074	13,612	11,970
Commercial	6,695	6,027	5,350	4,583	4,073	3,311
Industrial	161	150	141	99	97	88
	36,309	31,248	26,329	20,756	17,782	15,369
Average Annual Consumption per Customer (Therms):						
Residential	967	945	907	911	813	835
Commercial	5,818	5,697	5,780	5,884	5,094	4,715
Average Annual Revenue per Customer:						
Residential	$141	$139	$136	$136	$130	$114
Commercial	$540	$522	$535	$544	$485	$460
Average Rate per Therm:						
Residential	14.57¢	14.70¢	15.03¢	14.96¢	16.02¢	13.65¢
Commercial	9.27¢	9.16¢	9.25¢	9.25¢	9.51¢	9.76¢
Cost of Gas	$11,578,929	$10,041,565	$8,117,208	$6,444,015	$6,441,827	$5,992,232
Average Cost per Therm for all gas purchased	3.21¢	3.20¢	3.21¢	3.21¢	3.16¢	3.10¢
Operating Expenses (excluding cost of gas, depreciation, amortization and taxes)	$1,828,754	$1,580,942	$1,270,345	$1,149,150	$1,185,986	$1,230,575
Operating Expenses as a Percent of Gross Revenue	10.11%	10.09%	10.02%	11.24%	12.14%	14.06%
Utility Plant:						
Gross plant (end of year)	$42,886,474	$35,462,713	$30,842,237	$26,103,303	$23,817,105	$22,398,939
Construction expenditures	$ 7,918,270	$ 4,869,874	$ 4,907,879	$ 2,422,370	$ 1,547,563	$ 1,636,379
Accumulated depreciation (end of year)	$ 4,542,175	$ 3,923,315	$ 3,449,453	$ 2,939,889	$ 2,428,392	$ 1,922,266
Net Earnings (after provision for preferred dividends)	$ 1,311,156	$993,310	$689,688	$245,182	$36,522	$(549,464)*
Earnings per Common Share	$1.17	$ .90	$ .62	$ .22	$ .03	$(.50)

*Excluding capital gains of $413,609

[fol. 333-2]

EXHIBIT 2 TO ANNEX A

Effective May 16, 1963

SERVICE AGREEMENT

dated

March 8, 1963

between

EL PASO NATURAL GAS COMPANY
"Seller"

and

CASCADE NATURAL GAS CORPORATION
"Buyer"

Providing for firm natural gas
service for communities served
by Cascade Natural Gas Corporation

[fol. 333-3] SERVICE AGREEMENT

(Firm Service)

THIS AGREEMENT, made and entered into this 8th day of March, 1963, by and between EL PASO NATURAL GAS COMPANY, a Delaware corporation, hereinafter called "Seller", and CASCADE NATURAL GAS CORPORATION, a Washington corporation, hereinafter called "Buyer",

In consideration of the mutual covenants and agreements as herein set forth, the parties hereto agree as follows:

ARTICLE I—GAS TO BE SOLD AND PURCHASED

Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, the following quantities of natural gas:

The gas required by Buyer for resale and distribution to consumers thereof, including right-of-way and rural consumers, situated in or near each of the communities or distribution systems listed in Exhibit A hereto, except such gas as Buyer may purchase from Seller under rate schedules of Seller other than that specified in Article III hereof; provided, however, that Seller shall not be obligated to deliver to Buyer and Buyer shall not be entitled to receive from Seller hereunder on any one day for each such community or distribution system a volume of natural gas possessing in excess of the quantity of therms shown for each such community or distribution system in Exhibit A hereto, which quantity shall constitute the Contract Demand for each such community or distribution system.

ARTICLE II—DELIVERY POINTS AND PRESSURES

Delivery of natural gas by Seller to Buyer shall be at or near the points whose locations are described in Exhibit B hereto.

Gas shall be delivered by Seller to Buyer at such pressures as may be available, from time to time, at the said points of delivery but in no event at pressures less than the pressures specified in Exhibit B hereto.

ARTICLE III—APPLICABLE RATE SCHEDULE

Buyer agrees to pay Seller for all natural gas service rendered under the terms of this Agreement in accordance with Seller's Rate Schedules designated in Exhibit A hereto as filed with the Federal Power Commission, and as such rate schedules may be amended or superseded from time to time. This Agreement shall be subject to the provisions of such rate schedules and the General Terms and Conditions applicable thereto on file with the Federal Power Commission and effective from time to time, which by this reference are incorporated herein and made a part hereof.

[fol. 333-4]

ARTICLE IV—TERM OF AGREEMENT

This Agreement shall become effective on the date so designated by the Federal Power Commission and shall continue in effect for a period extending for a primary term to and including February 28, 1981, and from year to year thereafter, subject, however, to termination:

1. At expiration of the said primary term or upon any subsequent anniversary thereof by either party hereto through written notice so stating and given the other no less than twelve (12) months in advance; or
2. As provided under terms of any subsequent Service Agreement by and between the parties hereto.

ARTICLE V—CANCELLATION OF PRIOR AGREEMENTS

When this Agreement takes effect, it supersedes, cancels and terminates the following agreements:

SERVICE AGREEMENT between EL PASO NATURAL GAS COMPANY and CASCADE NATURAL GAS CORPORATION (Firm) Dated May 16, 1961.

SERVICE AGREEMENT between EL PASO NATURAL GAS COMPANY and PACIFIC NATURAL GAS COMPANY (Firm) Dated May 14, 1961.

ARTICLE VI—SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above set forth.

EL PASO NATURAL GAS COMPANY
(Seller)

By /s/ R. W. HARRIS
Vice President
(Title)

Attest: /s/ G. SCOTT CUMING
Assistant Secretary
(Title)

CASCADE NATURAL GAS CORPORATION
(Buyer)

By /s/ O. M. JONES
Pres.
(Title)

Attest: /s/ WILLIAM E. WALL
Secretary
(Title)

[fol. 333-5]

Effective September 1, 1963

EXHIBIT A TO SERVICE AGREEMENT
DATED: March 8, 1963

Effective: Upon the Date So Designated by the Federal Power Commission

Supersedes EXHIBIT A Effective: August 10, 1963

Community or System (Description)	Contract Demand (Therms)	Rate Schedule
Aberdeen, Hoquiam, Cosmopolis, Elma, McCleary and Montesano, Washington, and environs		
From the date hereof to October 31, 1964, both dates inclusive	22,000	DI-1
From November 1, 1964, to October 31, 1965, both dates inclusive	35,000	
From November 1, 1965, to October 31, 1966, both dates inclusive	52,000	
From November 1, 1966, to the termination date hereof, both dates inclusive	67,000	
Anacortes, Burlington and Sedro-Woolley Washington, and environs	25,000	DI-1
Arlington, Washington, and environs	2,750	DS-1
Athena and Weston, Oregon, and environs	2,510	DS-1
Baker, Oregon, and environs	26,100	DI-1
Bellingham and Ferndale, Washington and environs	63,300	DI-1
Bend, Oregon, and environs		
From the date hereof to October 31, 1963, both dates inclusive	11,000	
From November 1, 1963, to October 31, 1964, both dates inclusive	16,000	DI-2
From November 1, 1964 to the termination date hereof, both dates inclusive	19,000	

[fol. 333-6]

Community or System (Description)	Contract Demand (Therms)	Rate Schedule
Bremerton, Shelton, Port Orchard, Bangor, Silverdale and Chico, Washington, and environs		
From the date hereof to October 31, 1964, both dates inclusive	28,000	
From November 1, 1964, to October 31, 1965, both dates inclusive	39,000	DI-1
From November 1, 1965, to October 31, 1966, both dates inclusive	53,000	
From November 1, 1966, to the termination date hereof, both dates inclusive	66,000	
Burbank Heights, Washington, and environs	500	DS-1
Castle Rock, Washington, and environs	2,830	DS-1
Gilchrist and Crescent, Oregon and environs		
From the date hereof to October 31, 1963, both dates inclusive	1,750	
From November 1, 1963 to the termination date hereof, both dates inclusive	2,000	DI-2
Grandview, Washington, and environs	5,750	DS-1
Grotto, Washington, and environs	39,000	DI-1
Hermiston, Oregon and environs	7,847	DS-1
Kalama, Washington, and environs	1,700	DS-1
Kennewick and Richland, Washington and environs	26,200	DI-1
Longview-Kelso, Washington and environs	26,000	DI-1
Lynden, Everson and Nooksack, Washington, and environs	1,500	DS-1
Madras, Oregon, and environs		
From the date hereof to October 31, 1963, both dates inclusive	4,000	
From November 1, 1963 to the termination date hereof, both dates inclusive	5,000	DI-3

[fol. 333-7]

Community or System (Description)	Contract Demand (Therms)	Rate Schedule
Milton-Freewater, Oregon, and environs	9,000	DS-1
Monroe, Washington, and environs	5,240	DS-1
Moses Lake, Washington, and environs	85,000	DI-1
Mount Vernon, Washington, and environs	30,840	DI-1
Ontario and Nyssa, Oregon, and environs	30,000	DI-1
Othello, Washington, and environs		
From the date hereof to October 31, 1964, both dates inclusive	7,500	
From November 1, 1964, to October 31, 1965, both dates inclusive	8,800	DS-1
From November 1, 1965, to the termination date hereof, both dates inclusive	9,960	
Pasco, Washington, and environs	15,600	DI-1
Pendleton, Oregon, and environs	52,100	DI-1
Prosser, Washington, and environs	7,000	DI-1
Redmond, Oregon, and environs		
From the date hereof to October 31, 1963, both dates inclusive	6,500	DI-3
From November 1, 1963, to the termination date hereof, both dates inclusive	8,000	
Snohomish, Washington, and environs	7,310	DS-1
Sumas, Washington, and environs	1,000	DS-1
Sunnyside, Washington, and environs	14,000	DI-1
Toppenish, Zillah, Granger and Wapato, Washington, and environs	25,800	DI-1
Umatilla, Oregon, and environs	2,500	DS-1
Walla Walla, Washington, and environs	44,700	DI-1
Wenatchee, Washington, and environs	40,000	DI-1
Woodland, Washington, and environs	2,740	DS-1

[fol. 333-8]

Community or System (Description)	Contract Demand (Therms)	Rate Schedule
Yakima and Union Gap, Washington, and environs	100,300	DI-1

EL PASO NATURAL GAS COMPANY
(Seller)

By /s/ R. W. HARRIS, Vice President
(Title)

Executed on July 12, 1963

CASCADE NATURAL GAS CORPORATION
(Buyer)

By /s/ O. M. JONES
President (Title)

Executed on July 10, 1963

[fol. 333-9]

Effective September 1, 1963

EXHIBIT B TO SERVICE AGREEMENT
DATED: March 8, 1963

Effective: Upon the Date So Designated by the Federal Power Commission

Supersedes EXHIBIT B Effective: August 10, 1963

Delivery Point (Location)	Delivery Pressure (psig)
For Aberdeen, Hoquiam, Cosmopolis, Elma, McCleary and Montesano, Washington, and environs:	
Adjacent to Sellers, lateral line in the Southwest Quarter (SW/4) of the Southwest Quarter (SW/4), Section Thirteen (13), Township Eighteen (18) North, Range Five (5) West, Grays Harbor County, Washington	375
For Anacortes, Burlington, and Sedro-Woolley, Washington, and environs:	
Adjacent to Seller's main line in the Southwest Quarter (SW/4) of the Northeast Quarter (NE/4), Section Eighteen (18), Township Thirty-five (35) North, Range Five (5) East, Skagit County, Washington	150
For Arlington, Washington, and environs:	
Adjacent to Seller's main line in the Southwest Quarter (SW/4) of the Northeast Quarter (NE/4), Section Twelve (12), Township Thirty-one (31) North, Range Five (5) East, Snohomish County, Washington	150
Various main line taps located on Sellers' transmission line in Snohomish County, Washington	150

Delivery Point (Location)	Delivery Pressure (psig)
For Athena and Weston, Oregon, and environs:	
Adjacent to Seller's lateral line in the Northeast Quarter (NE/4) of the Southeast Quarter (SE/4), Section Twenty (20), Township Four (4) North, Range Thirty-five (35) East, Umatilla County, Oregon	150
[fol. 333-10]	
For Baker, Oregon, and environs:	
Adjacent to Seller's main line in the Southeast Quarter (SE/4) of the Northeast Quarter (NE/4), Section Nineteen (19), Township Nine (9) South, Range Forty (40) East, Baker County, Oregon	150
Adjacent to Seller's main line in the Southwest Quarter (SW/4) of the Northwest Quarter (NW/4), Section Thirty-one (31), Township Eight (8) South, Range Forty (40) East, Baker County, Oregon	150
For Bellingham and Ferndale, Washington, and environs:	
Adjacent to Seller's lateral line in the Southeast Quarter (SE/4) of the Southwest Quarter (SW/4), Section Ten (10), Township Thirty-eight (38) North, Range Three (3) East, Whatcom County, Washington	150
Various mine line taps located on Seller's transmission line in Whatcom County, Washington	150
For Bend, Oregon, and environs:	
Adjacent to Pacific Gas Transmission Company's Main line in the Northeast Quarter (NE/4) of the Northeast Quarter (NE/4), Section Two (2), Township Eighteen (18) South, Range Twelve (12) East, Deschutes County, Oregon	150

Delivery Point (Location)	Delivery Pressure (psig)
For Bremerton, Shelton, Port Orchard, Bangor, Silverdale and Chico, Washington, and environs:	
Adjacent to Seller's lateral line in the Northeast Quarter (NE/4) of the Southwest Quarter (SW/4) Section Twenty-five (25), Township Twenty (20) North, Range Four (4) West, Mason County, Washington	375
For Burbank Heights, Washington, and environs:	
Adjacent to Seller's lateral line in the Southwest Quarter (SW/4) of the Northwest Quarter (NW/4), Section Thirty-one (31), Township Ten (10) North, Range Thirty (30) East, Franklin County, Washington	150
[fol. 333-11] *For Castle Rock, Washington, and environs:*	
Adjacent to Seller's main line in the Southwest Quarter (SW/4) of the Southwest Quarter (SW/4), Section Twelve (12), Township Nine (9) North, Range Two (2) West, Cowlitz County, Washington	150
For Gilchrist and Crescent, Oregon, and environs:	
Adjacent to Pacific Gas Transmission Company's Main Line in the Southwest Quarter (SW/4) of the Southwest Quarter (SW/4,) Section Twenty (20), Township Twenty-four (24) South, Range Nine (9) East, Klamath County, Oregon	150
For Grandview, Washington, and environs:	
Adjacent to Seller's lateral line in the Northwest Quarter (NW/4) of the Northwest Quarter (NW/4), Section Fourteen (14), Township Nine (9) North, Range Twenty-three (23) East, Yakima County, Washington	150

Delivery Point (Location)	Delivery Pressure (psig)
Various lateral line taps located on Seller's transmission line in Yakima County, Washington	150
For Grotto, Washington, and environs:	
Adjacent to Seller's lateral line in the Northeast Quarter (NE/4) of the Northwest Quarter (NW/4), Section Twenty (20), Township Twenty-six (26) North, Range Eleven (11), East, King County, Washington	150
For Hermiston, Oregon, and environs:	
Adjacent to Seller's main line in the Northwest Quarter (NW/4) of the Northwest Quarter (NW/4), Section Thirty-five (35), Township Five (5) North, Range Twenty-eight (28) East, Umatilla County, Oregon	150
For Kalama, Washington, and environs:	
Adjacent to Seller's main line in the Northwest Quarter (NW/4) of the Southeast Quarter (SE/4), Section Ten (10), Township Six (6) North, Range One (1) West, Cowlitz County, Washington	150

[fol. 333-12]

For Kennewick and Richland, Washington, and environs:	
Adjacent to Seller's main line in the Southwest Quarter (SW/4) of the Southwest Quarter (SW/4), Section Thirty-three (33), Township Nine (9) North, Range Twenty-nine (29) East, Benton County, Washington	150
For Longview-Kelso, Washington, and environs:	
Adjacent to Seller's main line in the Southwest Quarter (SW/4) of the Northeast Quarter (NE/4), Section Twenty-four (24), Township Eight (8) North, Range Two (2) West, Cowlitz County, Washington	150

Delivery Point (Location)	Delivery Pressure (psig)
For Lynden, Everson and Nooksack, Washington and environs:	
Adjacent to Seller's main line in the Northeast Quarter (NE/4) of the Southwest Quarter (SW/4), Section Twenty-seven (27), Township Forty (40) North, Range Four (4) East, Whatcom County, Washington	150
For Madras, Oregon, and environs:	
Adjacent to Pacific Gas Transmission Company's Main Line in the Southeast Quarter (SE/4) of the Northwest Quarter (NW/4), Section Eleven (11), Township Eleven (11) South, Range Fourteen (14) East, Jefferson County, Oregon	150
For Milton-Freewater, Oregon, and environs:	
Adjacent to Seller's lateral line in the Southeast Quarter (SE/4) of the Southwest Quarter (SW/4), Section Six (6), Township Five (5) North, Range Thirty-six (36) East, Umatilla County, Oregon	150
For Monroe, Washington, and environs:	
Adjacent to Seller's lateral line in the Southeast Quarter (SE/4) of the Northeast Quarter (NE/4), Section Thirty-five (35), Township Twenty-eight (28) North, Range Six (6) East, Snohomish County, Washington	150

[fol. 333-13]

For Moses Lake, Washington, and environs:	
Adjacent to Seller's lateral line in the Southwest Quarter (SW/4) of the Northeast Quarter (NE/4), Section Twenty (20), Township Nineteen (19) North, Range Twenty-nine (29) East, Grant County, Washington	150

Delivery Point (Location)	Delivery Pressure (psig)
Adjacent to Seller's lateral line in the Northwest Quarter (NW/4) of the Northeast Quarter (NE/4), Section One (1), Township Eighteen (18) North, Range Twenty-nine (29) East, Grant County, Washington	150
Various lateral line taps located on Seller's transmission line in Grant County, Washington	150
For Mount Vernon, Washington, and environs:	
Adjacent to Seller's main line in the Southwest Quarter (SW/4) of the Southeast Quarter (SE/4), Section Eighteen (18), Township Thirty-four (34) North, Range Five (5) East, Skagit County, Washington	150
For Ontario and Nyssa, Oregon, and environs:	
Adjacent to Seller's main line in the Northeast Quarter (NE/4) of the Northwest Quarter (NW/4), Section Twenty-eight (28), Township Seventeen (17) South, Range Forty-seven (47) East, Malheur County, Oregon	150
For Othello, Washington, and environs:	
Adjacent to Seller's lateral line in the Southeast Quarter (SE/4) of the Southeast Quarter (SE/4), Section Two (2), Township Sixteen (16) North, Range Thirty (30) East, Adams County, Washington	300
For Pasco, Washington, and environs:	
Adjacent to Seller's lateral line in the Southeast Quarter (SE/4) of the Southwest Quarter (SW/4), Section Twenty-one (21), Township Nine (9) North, Range Twenty-nine (29) East, Franklin County, Washington	150

Delivery Point (Location)	Delivery Pressure (psig)
For Pendleton, Oregon, and environs:	
Adjacent to Seller's main line in the Southeast Quarter (SE/4) of the Southeast Quarter (SE/4), Section Twenty-one (21), Township Three (3) North, Range Thirty-two (32) East, Umatilla County, Oregon	150
[fol. 333-14]	
For Prosser, Washington, and environs:	
Adjacent to Seller's lateral line in the Southeast Quarter (SE/4) of the Northwest Quarter (NW/4), Section Ten (10), Township Eight (8) North, Range Twenty-four (24) East, Benton County, Washington	150
For Redmond, Oregon, and environs:	
Adjacent to Pacific Gas Transmission Company's Main Line in the Southwest Quarter (SW/4) of the Southeast Quarter (SE/4), Section Thirteen (13), Township Fifteen (15) South, Range Thirteen (13) East, Deschutes County, Oregon	150
For Snohomish, Washington, and environs:	
Adjacent to Seller's main line in the Southwest Quarter (SW/4) of the Southeast Quarter (SE/4), Section Sixteen (16), Township Twenty-eight (28), North, Range Six (6) East, Snohomish County, Washington	150
For Sumas, Washington, and environs:	
Adjacent to Seller's main line in the Northeast Quarter (NE/4), Section Thirty-six (36), Township Forty-one (41) North, Range Four (4) East, Whatcom County, Washington	150

Delivery Point (Location)	Delivery Pressure (psig)
For Sunnyside, Washington, and environs:	
Adjacent to Seller's lateral line in the Northeast Quarter (NE/4) of the Northeast Quarter (NE/4); Section Two (2), Township Nine (9) North, Range Twenty-two (22) East, Yakima County, Washington	150
Various lateral line taps located on Seller's transmission line in Yakima County, Washington	150
For Umatilla, Oregon, and environs:	
Adjacent to Seller's lateral line in the Southeast Quarter (SE/4) of the Southwest Quarter (SW/4), Section Fourteen (14), Township Five (5) North, Range Twenty-seven (27) East, Umatilla County, Oregon	150
[fol. 333-15]	
For Toppenish, Zillah, Granger and Wapato, Washington, and environs:	
Adjacent to Seller's lateral line in the Southwest Quarter (SW/4) of the Northwest Quarter (NW/4), Section Eleven (11), Township Eleven (11) North, Range Twenty (20) East, Yakima County, Washington	150
For Walla Walla, Washington, and environs:	
Adjacent to Seller's lateral line in the Northwest Quarter (NW/4) of the Southwest Quarter (SW/4), Section Thirty-one (31), Township Seven (7) North, Range Thirty-six (36) East, Walla Walla County, Washington	150
For Wenatchee, Washington, and environs:	
Adjacent to Seller's lateral line in the Southwest Quarter (SW/4) of the Northwest Quarter (NW/4), Section Twenty-seven (27), Township Twenty-two (22) North, Range Twenty-one (21) East, Chelan County, Washington	150

Delivery Point (Location)	Delivery Pressure (psig)
For Woodland, Washington, and environs:	
Adjacent to Seller's main line in the Southwest Quarter (SW/4) of the Northeast Quarter (NE/4), Section Eighteen (18), Township Five (5) North, Range One (1) East, Cowlitz County, Washington	150
For Yakima and Union Gap, Washington, and environs:	
Adjacent to Seller's lateral line in the Southwest Quarter (SW/4) of the Southwest Quarter (SW/4), Section Sixteen (16), Township Thirteen (13) North, Range Nineteen (19) East, Yakima County, Washington	150

EL PASO NATURAL GAS COMPANY
(Seller)

By /s/ R. W. HARRIS, Vice President
(Title)

Executed on July 12, 1963

CASCADE NATURAL GAS CORPORATION
(Buyer)

By /s/ O. M. JONES
President (Title)

Executed on July 10, 1963

[fol. 333-16]

EXHIBIT 3 TO ANNEX A

EFFECTIVE: JUNE 18, 1964

SERVICE AGREEMENT

dated

April 28, 1964

between

EL PASO NATURAL GAS COMPANY

"Seller"

and

CASCADE NATURAL GAS CORPORATION

"Buyer"

Providing for *interruptible* and *seasonal* natural gas service for distribution systems operated by Cascade Natural Gas Corporation

[fol. 333-17]

SERVICE AGREEMENT

(Interruptible and Seasonal)

THIS AGREEMENT, made and entered into this 28th day of April, 1964, by and between EL PASO NATURAL GAS COMPANY, a Delaware corporation, hereinafter called "Seller", and CASCADE NATURAL GAS CORPORATION, a Washington corporation, hereinafter called "Buyer",

In consideration of the mutual covenants and agreements as herein set forth, the parties hereto agree as follows:

ARTICLE I—GAS TO BE SOLD AND PURCHASED

Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, natural gas for resale to industrial and irrigation consumers of Buyer as listed in Exhibit A to this Agreement. Buyer shall have the right, by the serving upon Seller of not less than three (3) months' prior written notice, to remove any consumer from Exhibit A attached to this Agreement. The total natural gas to be sold to Buyer under this Agreement will be reduced by the amount shown on Exhibit A for the consumer so removed.

ARTICLE II—
DELIVERY POINTS AND PRESSURES

Delivery of natural gas by Seller to Buyer shall be at or near the points whose locations are described in Exhibit A. Gas shall be delivered by Seller to Buyer at such pressures as may be available at such points of delivery, which pressure shall not be less than 150 pounds per square inch gauge.

ARTICLE III—APPLICABLE RATE SCHEDULE

Buyer agrees to pay Seller for all natural gas service rendered under the terms of this Agreement in accordance with Seller's Rate Schedules I-1, I-2, I-3 and S-1 as filed with the Federal Power Commission, and as such rate schedules may be amended or superseded from time to time. This Agreement shall be subject to the provisions of such rate schedules and the General terms and Conditions applicable thereto on file with the Federal Power Commission and effective from time to time, which by this reference are incorporated herein and made a part hereof.

[fol. 333-18]

ARTICLE IV—TERM OF AGREEMENT

This Agreement shall become effective on the date so designated by the Federal Power Commission and shall continue in effect for a period extending to and including October 31, 1967.

ARTICLE V—
CANCELLATION OF PRIOR AGREEMENTS

When this Agreement takes effect, it supersedes, cancels and terminates the following agreements:

SERVICE AGREEMENT Between EL PASO NATURAL GAS COMPANY and CASCADE NATURAL GAS CORPORATION (Interruptible and Seasonal) Dated March 8, 1963

SERVICE AGREEMENT Between EL PASO NATURAL GAS COMPANY and CASCADE NATURAL GAS CORPORATION (Interruptible) Dated May 3, 1962

ARTICLE VI—SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above set forth.

EL PASO NATURAL GAS COMPANY
(Seller)

By /s/ R. W. HARRIS
Vice President (Title)

Attest: /s/ G. SCOTT CUMING
Assistant Secretary (Title)

CASCADE NATURAL GAS CORPORATION
(Buyer)

By /s/ D. M. JONES
President (Title)

Attest: /s/ A. R. MITCHELL
Secretary (Title)

[fol. 333-19]

EFFECTIVE: September 19, 1964

SERVICE AGREEMENT
(Interruptible and Seasonal Service)

EXHIBIT A TO SERVICE AGREEMENT
DATED: April 28, 1964

Effective: Upon the Date So Designated by the Federal Power Commission

Supersedes Exhibit A Effective: June 18, 1964

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
I. INTERRUPTIBLE INDUSTRIES (To Be Served Under Seller's Rate Schedule I-1)		
Aberdeen, Washington		At Seller's measuring station delivering gas for McCleary, Washington
Evans Harbor Products Co., ABCO Division	2,500 Therms	
Evans Harbor Products Co., Harbor Division	3,500 Therms	
Anacortes, Washington		At Seller's measuring station delivering gas for Anacortes, Washington
Northwest Petrochemical Corporation	4,500 Therms	
Scott Paper Company Westcoast Division Anacortes Plant	25,000 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
Shell Oil Company	140,000 Therms	
Texaco Inc.	140,000 Therms	
Attalia, Washington		At Seller's measuring station delivering gas for Burbank Heights, Washington
Boise Cascade Corporation Kraft Division	100,000 Therms	
Baker, Oregon		At Seller's measuring station delivering gas for Baker, Oregon
Chemical Lime Company	37,500 Therms	
Ellingson Lumber Company	6,000 Therms	
Ellingson Plywood Company	6,000 Therms	
[fol. 333-20] *Bellingham, Washington*		At Seller's measuring station delivering gas for Bellingham, Washington
A & M Rendering Company	1,300 Therms	
American Fabricators Incorporated	3,000 Therms	
Brooks Lumber Company	2,000 Therms	
Mt. Baker Plywood Company	9,500 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
Kaiser Cefnent and Gypsum Company Olympic Division	80,000 Therms	
Georgia Pacific Corporation Puget Sound Division	110,000 Therms	
Burlington, Washington		At Seller's measuring station delivering gas for Burlington, Washington
Chris Knutzen and Company	14,000 Therms	
Consolidated Dairy Products Company	5,000 Therms	
Cosmopolis, Washington		At Seller's measuring station delivering gas for McCleary, Washington
Weyerhaeuser Company	48,000 Therms	
Ferndale, Washington		At Seller's measuring station delivering gas for Bellingham, Washington
Mobil Oil Company	100,000 Therms	
Grandview, Washington		At Seller's measuring station delivering gas for Grandview, Washington
The Welch Grape Juice Company, Incorporated	5,500 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
Granger, Washington		At Seller's measuring station delivering gas for Granger, Washington
Granger Clay Products Company	6,000 Therms	
[fol. 333-91] *Hoquian, Washington*		At Seller's measuring station delivering gas for McCleary, Washington
Grays Harbor Veneer Corporation	3,200 Therms	
Kalama, Washington		At Seller's measuring station delivering gas for Kalama, Washington
The Dow Chemical Company	40,000 Therms	
Gram Lumber Company	2,500 Therms	
Pope and Talbot Incorporated	4,000 Therms	
Kennewick, Washington		At Seller's measuring station delivering gas for Kennewick, Washington
California Chemical Corporation	14,000 Therms	
The Welch Grape Juice Company, Incorporated	5,500 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
Longview, Washington		At Seller's measuring station delivering gas for Longview, Washington
Longview Fibre Company	220,000 Therms	
Port of Longview Dry Kiln	4,000 Therms	
Reynolds Metals Company	15,000 Therms	
Ross-Simmons Hardwood Lumber Company	2,150 Therms	
Washington Pulp & Timber Company	3,000 Therms	
Weyerhaeuser Company	240,000 Therms	
Lynden, Washington		At Seller's measuring station delivering gas for Lynden, Washington
Great Western Lumber Company	2,000 Therms	
Whatcom County Dairymen's Association	9,000 Therms	
Milton-Freewater, Oregon		At Seller's measuring station delivering gas for Milton-Freewater, Oregon
Rogers Walla Walla Canning Co. (Milton-Freewater Plant)	18,000 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
Umatilla Canning Company (South Plant & North Plant)	10,000 Therms	
[fol. 333-22]		
Monroe, Washington		At Seller's measuring station delivering gas for Monroe, Washington
McKennon Dairy Farms, Inc.	3,200 Therms	
Moses Lake, Washington		At Seller's measuring station delivering gas for Moses Lake, Washington
Utah-Idaho Sugar Company	108,000 Therms	
Mount Vernon, Washington		At Seller's measuring station delivering gas for Mount Vernon, Washington
Carnation Company	4,500 Therms	
Consolidated Dairy Products Co.	4,500 Therms	
Libby, McNeill & Libby	2,750 Therms	
Stokely-Van Camp, Inc. Frozen Food Division	3,500 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
Nyssa, Oregon		At Seller's measuring station delivering gas for Nyssa, Oregon
The Amalgamated Sugar Company	180,000 Therms	
Idaho Canning Company	4,000 Therms	
Ontario, Oregon		At Seller's measuring station delivering gas for Ontario, Oregon
Ore-Ida Foods, Incorporated	18,000 Therms	
Pendleton, Oregon		At Seller's measuring station delivering gas for Pendleton, Oregon
Pendleton Woolen Mills	4,000 Therms	
Pilot Rock, Oregon		At Seller's measuring station delivering gas for Pendleton, Oregon
U. S. Gypsum Company	34,000 Therms	
[fol. 333-23] *Prosser, Washington*		At Seller's measuring station delivering gas for Prosser, Washington
Seneca Grape Juice Company	12,000 Therms	
Shelton, Washington		At Seller's measuring station delivering gas for Shelton, Washington
L. R. Smith Hardwood Company	2,500 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
Sunnyside, Washington		At Seller's measuring station delivering gas for Sunnyside, Washington
Carnation Company	4,500 Therms	
Toppenish, Washington		At Seller's measuring station delivering gas for Toppenish, Washington
California Packing Corporation	18,000 Therms	
Utah-Idaho Sugar Company	100,000 Therms	
Union Gap, Washington		At Seller's measuring station delivering gas for Yakima, Washington
Swift and Company	2,000 Therms	
Walla Walla, Washington		At Seller's measuring station delivering gas for Walla Walla, Washington
General Foods Corporation Birdseye Division	14,000 Therms	
Jaymar Mill Company	3,200 Therms	
Libby, McNeill & Libby Inc.	12,000 Therms	
Rogers Walla Walla Canning Co. (Walla Walla Plant)	14,000 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
Wapato, Washington		At Seller's measuring station delivering gas for Wapato, Washington
Wapato Fruit Products	2,250 Therms	
[fol. 333-24] *Wenatchee, Washington*		At Seller's measuring station delivering gas for Wenatchee, Washington
Aluminum Company of America	30,000 Therms	
Cedargreen Foods	4,000 Therms	
Pacific Pulp Molding Company	14,000 Therms	
Valley Evaporating Company	5,500 Therms	
Weston, Oregon		At Seller's measuring station delivering gas for Weston, Oregon
Lamb-Weston, Inc.	13,000 Therms	
Woodland, Washington		At Seller's measuring station delivering gas for Woodland, Washington
Woodland Tie Company	1,600 Therms	
Yakima, Washington		At Seller's measuring station delivering gas for Yakima, Washington
California Packing Corporation	18,000 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
Libby, McNeill & Libby, Inc.	10,000 Therms	
Pacific Power and Light Company (Yakima Central Steam)	7,000 Therms	
Washington Canners Cooperative	6,500 Therms	
Zillah, Washington		At Seller's measuring station delivering gas for Zillah, Washington
Stokely-Van Camp, Inc. Frozen Food Division	5,000 Therms	

(To Be Served Under Seller's Rate Schedule I-2)

NONE

[fol. 333-25]

(To Be Served Under Seller's Rate Schedule I-3)

Madras, Oregon		At Seller's measuring station delivering gas for Madras, Oregon
Jefferson Plywood Company	10,000 Therms	
Redmond, Oregon		At Seller's measuring station delivering gas for Redmond, Oregon
Dahl Plywood Company	7,500 Therms	
Tite Knot Pine Mill	12,000 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
II. SEASONAL INDUSTRIALS		
(To Be Served Under Seller's Rate Schedule S-1)		
Anacortes, Washington		At Seller's measuring station delivering gas for Anacortes, Washington
American Packing Corporation	1,500 Therms	
Fisherman's Packing Company	500 Therms	
Nakat Packing Company	2,000 Therms	
Sebastian Stuart Fish Company	380 Therms	
J. E. Traftone & Sons Company	1,500 Therms	
Athena, Oregon		At Seller's measuring station delivering gas for Athena, Oregon
Rogers Walla Walla Canning Company (Athena Plant)	2,000 Therms	
Bellingham, Washington		At Seller's measuring station delivering gas for Bellingham, Washington
Fidalgo Island Packing Company	2,000 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
Burlington, Washington		At Seller's measuring station delivering gas for Burlington, Washington
Cascade Frozen Foods, Inc.	2,000 Therms	
Pierson Dehydration Company	3,000 Therms	
[fol. 333-26]		
Everson, Washington		At Seller's measuring station delivering gas for Everson, Washington
Kale Canning Company	4,500 Therms	
Lynden Clay Products Company	2,750 Therms	
Ferndale, Washington		At Seller's measuring station delivering gas for Bellingham, Washington
Kelly Farquhar & Company	5,000 Therms	
Grandview, Washington		At Seller's measuring station delivering gas for Grandview, Washington
Grandview Canning Company	600 Therms	
Libby, McNeill & Libby, Inc.	5,000 Therms	
Safeway Stores, Incorporated Safeway Juice Plant Brookside Division	6,000 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
Top Side Canning Company	1,000 Therms	
Yakima Valley Grape Producers, Inc.	4,500 Therms	
Kennewick, Washington		At Seller's measuring station delivering gas for Kennewick, Washington
Layrite Concrete Products of Kennewick, Inc.	400 Therms	
Milton-Freewater, Oregon		At Seller's measuring station delivering gas for Milton-Freewater, Oregon
Smith Brothers Canning Company	2,000 Therms	
Moses Lake, Washington		At Seller's measuring station delivering gas for Moses Lake, Washington
United Concrete Pipe Corporation	1,800 Therms	
Ontario, Oregon		At Seller's measuring station delivering gas for Ontario, Oregon
Sweet Corn Research Company	2,500 Therms	
[fol. 333-27] *Pendleton, Oregon*		At Seller's measuring station delivering gas for Pendleton, Oregon
Pendleton Canning Company	2,300 Therms	

Name and Location of Industrial or Irrigation Consumer	Maximum Daily Volume To Be Supplied	Seller's Delivery Point Location
Smith Canning and Freezing Company	9,625 Therms	
Sunnyside, Washington		At Seller's measuring station delivering gas for Sunnyside, Washington
Sunnyside Custom Cannery	1,000 Therms	
Western Washington Co-op Farms	500 Therms	
Yakima, Washington		At Seller's measuring station delivering gas for Yakima, Washington
Blue Ribbon Growers, Inc.	5,400 Therms	
Hudson House, Inc.	4,000 Therms	

III. SEASONAL IRRIGATION

(To Be Served Under Seller's Rate Schedule S-1)

Various Irrigation Consumers Served from Seller's Main Line	Various	At taps along Seller's Main Line

EL PASO NATURAL GAS COMPANY
(Seller)

By /s/ R. W. HARRIS
Vice President (Title)

Executed on August 12, 1964

CASCADE NATURAL GAS CORPORATION
(Buyer)

By /s/ O. M. JONES
President (Title)

Executed on Aug. 11, 1964

[fol. 333-28]

EXHIBIT 4 TO ANNEX A

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL POWER COMMISSION

El Paso Natural Gas Company) Docket No. G-13202

STIPULATION AND AGREEMENT

Dated as of December 31, 1963

ARTICLE I

Introduction

On August 6, 1957, Pacific Northwest Pipeline Corporation, predecessor of El Paso Natural Gas Company, tendered for filing certain revised tariff sheets designed to increase rates applicable to certain of its customers. The rate proceeding initiated by this filing is designated Docket No. G-13202. By order of the Commission issued September 4, 1957 certain of these tariff sheets were suspended. Subsequently, following motion by the applicant, the suspended rates were permitted to go into effect subject to refund. From time to time thereafter El Paso has filed tariff sheets which have likewise been put into effect subject to the outcome of Docket No. G-13202. The specific tariff sheet designations are identified in the applicable Commission orders.

By letter dated May 14, 1963 to all parties and intervenors in such rate case, the Staff of the Federal Power Commission suggested that for the reasons set forth in said letter, it appeared that such rate case was appropriate [fol. 333-29] for settlement agreement providing for the

termination of the suspension order and permission for the rates to continue in effect.

From time to time prior to the execution of this Stipulation and Agreement conferences were held between the representatives of El Paso, the Commission's staff and the other parties to the above-entitled proceedings, seeking to arrive at a settlement thereof. As a result of such conferences, these parties have reached this Stipulation and Agreement for the purpose of settling and disposing of the above-mentioned rate proceedings.

This Stipulation and Agreement shall now be submitted to the Commission for its approval.

ARTICLE II

It is agreed that the order of the Federal Power Commission issued September 4, 1957 suspending El Paso's aforesaid revised tariffs and all subsequent orders of the Federal Power Commission suspending rates now being collected by El Paso from customers on its Northwest Division shall be terminated and the tariff sheets now on file applicable to sales being made by El Paso to customers on the Northwest Division shall be the unconditional lawful rates and El Paso's undertaking relating to refunds shall be ordered terminated by the Commission.

[fol. 333-30]

ARTICLE III

Moratorium

El Paso agrees that no applications for rate increases will be filed as to the Northwest Division applicable to Rate Schedules PL-2, PL-3, PL-4, DL-1, DI-1, DI-2, DI-3, DI-4, DI-5, DS-1, DS-4, I-1, I-2, I-3, I-4, I-5, C-1, S-1 and MDS-1 under circumstances where such increases will become effective, after full suspension by the Federal Power Commission, prior to November 1, 1965; provided, however, that in order to offset gas supplier rate increases filed to

be effective subsequent to the date hereof and aggregating more than two hundred fifty thousand dollars ($250,000.00), El Paso may apply for rate increases, limited to the net gas supplier rate increases described below, to become effective, after full suspension by the Federal Power Commission, no sooner than January 1, 1965.

The net gas supplier rate increases applicable to El Paso's Northwest Division shall be calculated by multiplying the increase in rate by the volumes purchased during the latest available 12-month period for each gas supplier affected and such results added together shall constitute the total increase in such gas purchase costs. The reductions in gas supplier rates, if any, shall be calculated in the same manner and the total of such reductions shall be deducted from the total increase to determine the net gas supplier rate increase. The increase in Northwest Division [fol. 333-31] sales rates shall be determined by dividing the net gas supplier rate increase, as herein calculated, by the total volumes of gas sold to all Northwest Division customers, both jurisdictional and nonjurisdictional, during such 12-month period. El Paso may file for such increase if the increase to be filed for equals or exceeds one-tenth of one cent per Mcf and the rates so filed shall be rounded off to the nearest one-hundredth cent.

ARTICLE IV

Contingent Refunds

It is agreed that if El Paso should hereafter receive from its gas suppliers refunds covering gas purchased for El Paso's jurisdictional customers on the Northwest Division which exceed one million dollars ($1,000,000.00) as to any calendar year from the inception of service through the year 1963, El Paso shall refund to such customers the amount of any such excess but only the amount of such excess. Such refund by El Paso shall be made pursuant to a plan to be submitted by it and made in a manner as directed by the Commission. There is reserved to the Commission and each of the parties hereto all authority, rights

and obligations with respect to any and all such gas supply refunds as may be received by El Paso covering any period subsequent to December 31, 1963 as though this Stipulation and Agreement had not been executed. El Paso agrees that within 75 days following the end of each calendar year, it will report in writing to the Commission the amount [fol. 333-32] of any such gas supplier refunds received by it covering the period from the inception of service to the end of the period of the moratorium.

Article V

Miscellaneous

1. Neither El Paso, the Commission's Staff, nor any other party to these proceedings shall be bound or prejudiced by any part of this Stipulation and Agreement unless it is approved and made effective by order of the Commission as to all its terms and conditions, without modification, and the proceedings in Docket No. G-13202 are terminated except as to those parties expressly objecting thereto.

2. This Stipulation and Agreement is made with the explicit understanding of all parties, including the Commission's Staff, that it constitutes a negotiated settlement of El Paso's presently pending rate proceedings in Docket No. G-13202; and none of the parties nor any other affected person shall be deemed to have approved, accepted, agreed or consented to any ratemaking principle, or any method of cost-of-service determination, or any allocation underlying or supposed to underlie any of the rates which by this Stipulation and Agreement are to continue in effect.

3. The provisions of this Stipulation and Agreement shall apply to all customers of El Paso's Northwest Division excepting only those who expressly object to the disposition of the aforesaid rate case as herein contemplated.

[fol. 333-33] 4. This Stipulation and Agreement may be executed in multiple counterparts and the execution of any party hereto to any such counterpart shall constitute execution of the said Stipulation and Agreement by such party whether or not such counterpart be executed by any other party or parties hereto.

5. This Stipulation and Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Stipulation and Agreement as of December 31, 1963.

EL PASO NATURAL GAS COMPANY

By /s/ HOWARD BOYD
President

By .....

[fol. 333-34] EXHIBIT 5

EL PASO NATURAL GAS COMPANY
ONE CHASE MANHATTAN PLAZA
New York 5, New York

PAUL KAYSER
Chairman of the Board

July 17, 1963

Mr. C. Spencer Clark
Chairman of the Board
Cascade Natural Gas Corporation
222 Fairview Avenue, North
Seattle 9, Washington

Dear Mr. Clark:

In order to assist you in meeting the competition of other fuels, beginning July 1, 1963, we will maintain the present

interruptible industrial rate at its present level for three years and will not increase it for another two-year period by an amount in excess of one mill per therm. In addition, we will make this interruptible service available to you for a ten-year period beginning July 1, 1963, the rate for the second five-year period to be such rate as is approved by the Federal Power Commission upon application by the Company under Section 4(e) of the Natural Gas Act.

Yours truly,

/s/ PAUL KAYSER

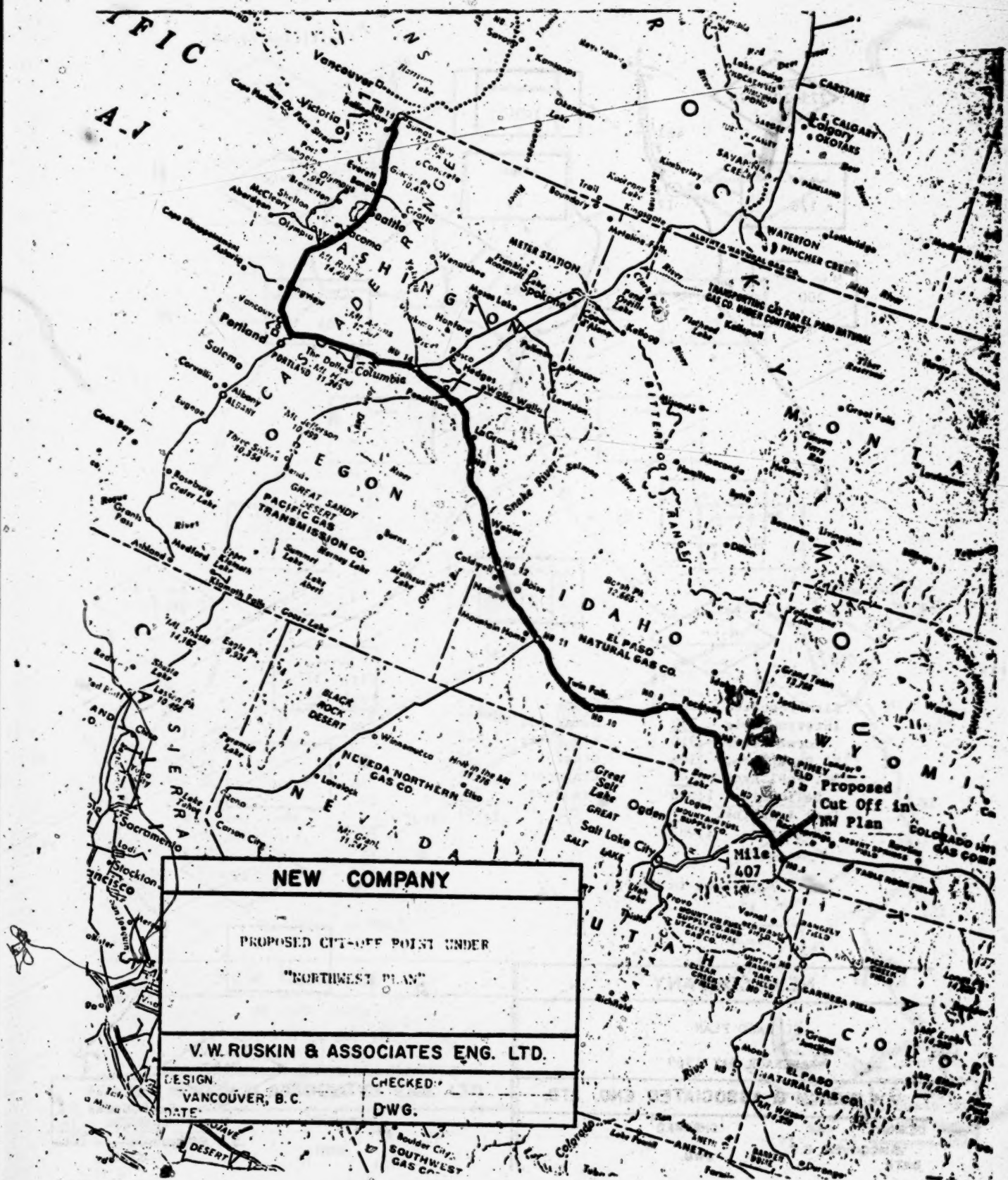
PK/cb

[fol. 333-35]

ANNEX B TO MEMORANDUM OF EVIDENCE

Law and Argument in Support of Application for Leave to Intervene

CASCADE NATURAL GAS CORPORATION
"NORTHWEST PLAN"
Suggested Modification
of
Proposal for Divestiture
November 11, 1964


Vancouver
Victoria
Seattle
Portland
Spokane
Salem
Eugene
Medford
Klamath Falls
Grants Pass
Roseburg
Crater Lake
Albany
Corvallis
The Dalles
Columbia
Pendleton
La Grande
Baker
Ontario
Boise
Twin Falls
Pocatello
Idaho Falls
Lewiston
Coeur d'Alene
Kellogg
Wenatchee
Moses Lake
Hanford
Yakima
Kennewick
Walla Walla
Longview
Aberdeen
Olympia
Bremerton
Everett
Bellingham
Oak Harbor
Port Angeles
Port Townsend
Cape Disappointment
Astoria
Kamloops
Okanagan Lake
Trail
Kimberley
Kootenay Lake
Kootenay River
Kingsgate
Fernie
Lethbridge
Calgary
Drumheller
Banff
Jasper
Edmonton
Red Deer
Medicine Hat
Waterton
Pincher Creek
Cardston
Sayabec Creek
Flathead Lake
Missoula
Butte
Helena
Great Falls
Bozeman
Billings
Livingston
Dillon
Idaho Falls
Yellowstone River
Snake River
Bitterroot Range
Rocky Mountains
Mt. Rainier 14,408
Mt. Adams 12,307
Mt. Hood 11,245
Mt. Jefferson 10,495
Three Sisters 10,354
Mt. Shasta 14,162
Lassen Pk. 10,466
Eagle Pk. 9,235
Mt. Grant 11,247
Wheeler Pk. 13,063
Boise Pk. 12,665
Grand Teton 13,766
Gannett Pk. 13,785
Mt. Whitney 14,495
Death Valley
Mojave Desert
Colorado River
Lake Powell
Lake Mead
Great Salt Lake
Salt Lake City
Ogden
Provo
Vernal
Green River
Rock Springs
Evanston
Cheyenne
Laramie
Casper
Sheridan
Gillette
Rawlins
Rock Springs
Meter Station
Transporting Gas for El Paso Natural Gas Co. under contract
Proposed Cut Off in NW Plan
Mile 407
Pacific Gas Transmission Co.
Nevada Northern Gas Co.
El Paso Natural Gas Co.
Colorado Interstate Gas Co.
Southwest Gas Co.
Great Sandy Desert
Black Rock Desert
Oregon
Idaho
Nevada
Utah
Wyoming
Colorado
Montana
California
Pacific Ocean
Alberta Natural Gas Co.
Mountain Fuel Supply Co.
Utah Gas Service Co.
Wasatch Oil Field
Rangely Field
Table Rock Field
Pleasant Valley Field
Garden Gulch Field
Big Piney Field
Barrett Draw
Barrett Bone
Sand Wash
Piceance Creek
Grand Junction
Durango
Farmington
Aneth
Bloomfield
Cortez
Monticello
Moab
Price
Richfield
Delta
Fillmore
Cedar City
Las Vegas
Reno
Carson City
Lovelock
Winnemucca
Elko
Ely
Tonopah
Mt. Wheeler 13,063
Mt. Moriah 12,067
Wheeler Peak 13,063
Mt. Jefferson 13,143
Mt. Tobin 12,274
Mt. Ruth 11,276
Mt. Grant 11,247
Mt. Whitney 14,495
Mt. Shasta 14,162
Lassen Pk. 10,466
Eagle Pk. 9,235
Mt. Rainier 14,408
Mt. Adams 12,307
Mt. Hood 11,245
Mt. Jefferson 10,495
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Boise Pk. 12,665
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Durango
Farmington
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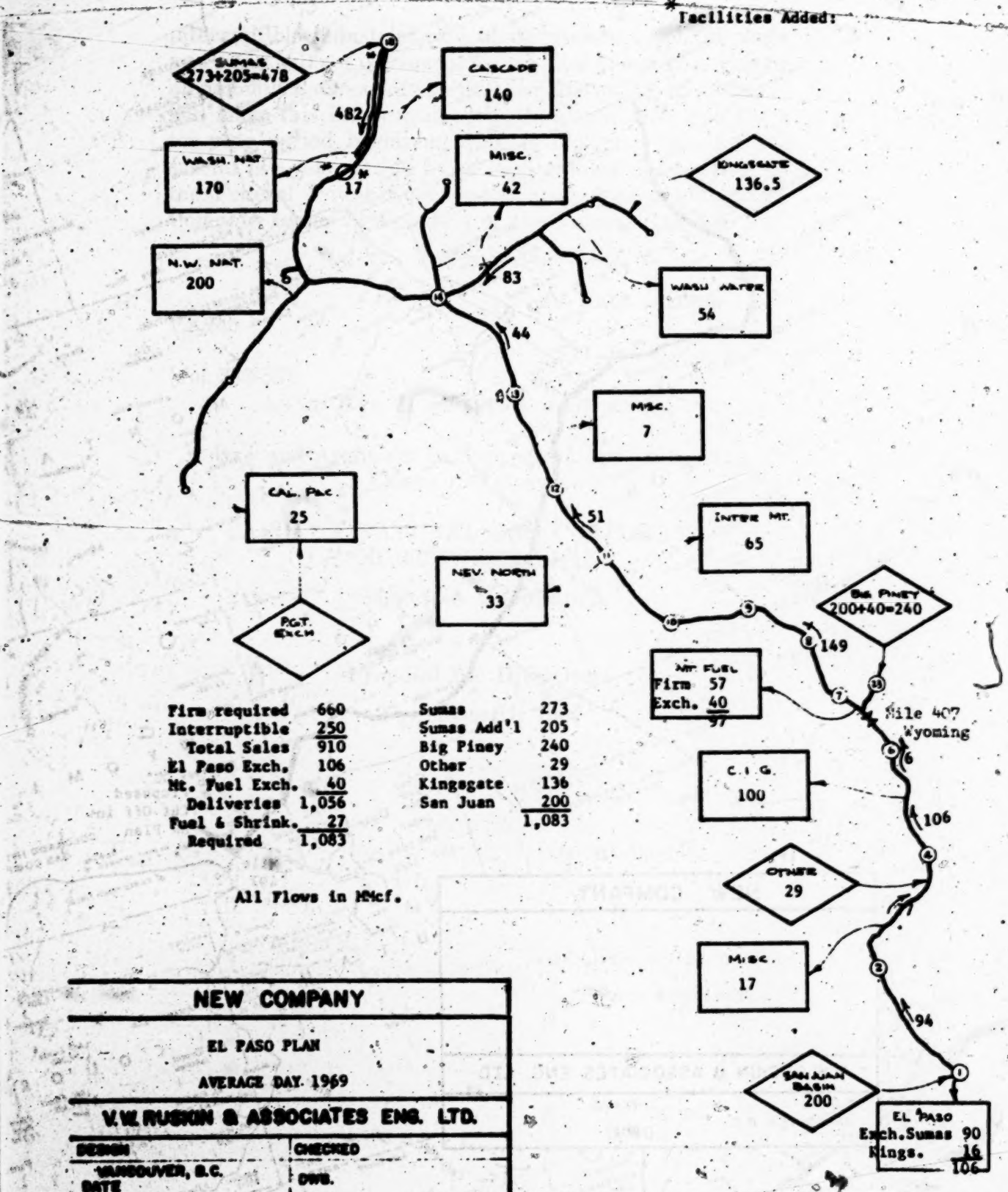
Bloomfield
Cortez
Monticello
Moab
Price
Richfield
Delta
Fillmore
Cedar City
Las Vegas
Reno
Carson City
Lovelock
Winnemucca
Elko
Ely
Tonopah
NEW COMPANY
PROPOSED CUT-OFF POINT UNDER
"NORTHWEST PLAN"
V. W. RUSKIN & ASSOCIATES ENG. LTD.
DESIGN
VANCOUVER, B.C.
DATE
CHECKED
DWG.

Exhibit 2.1



Firm required	660
Interruptible	250
Total Sales	910
El Paso Exch.	106
Mt. Fuel Exch.	40
Deliveries	1,056
Fuel & Shrink.	27
Required	1,083

Sumas	273
Sumas Add'l	205
Big Piney	240
Other	29
Kingsgate	136
San Juan	200
	1,083

All Flows in MMcf.

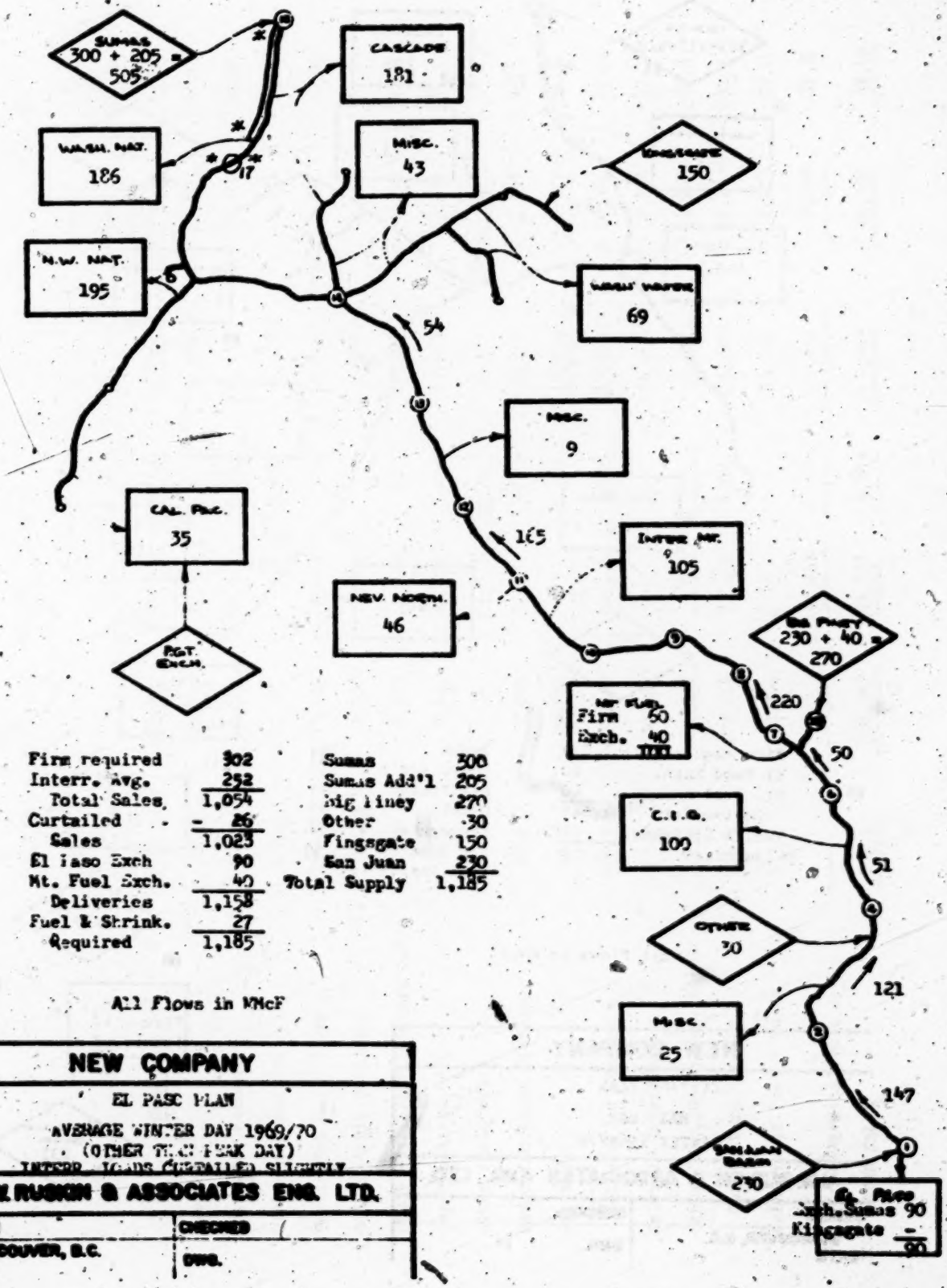
NEW COMPANY

EL PASO PLAN

AVERAGE DAY 1969

V.W. RUSKIN & ASSOCIATES ENG. LTD.

DESIGN	CHECKED
VANCOUVER, B.C. DATE	DWG.



Firm required	302	Sumas	300
Interr. Avg.	252	Sumas Add'l	205
Total Sales	1,054	Big Piney	270
Curtailed	- 86	Other	30
Sales	1,023	Kingsgate	150
El Paso Exch	90	San Juan	230
Mt. Fuel Exch.	40	Total Supply	1,185
Deliveries	1,158		
Fuel & Shrink.	27		
Required	1,185		

All Flows in MMcF

NEW COMPANY

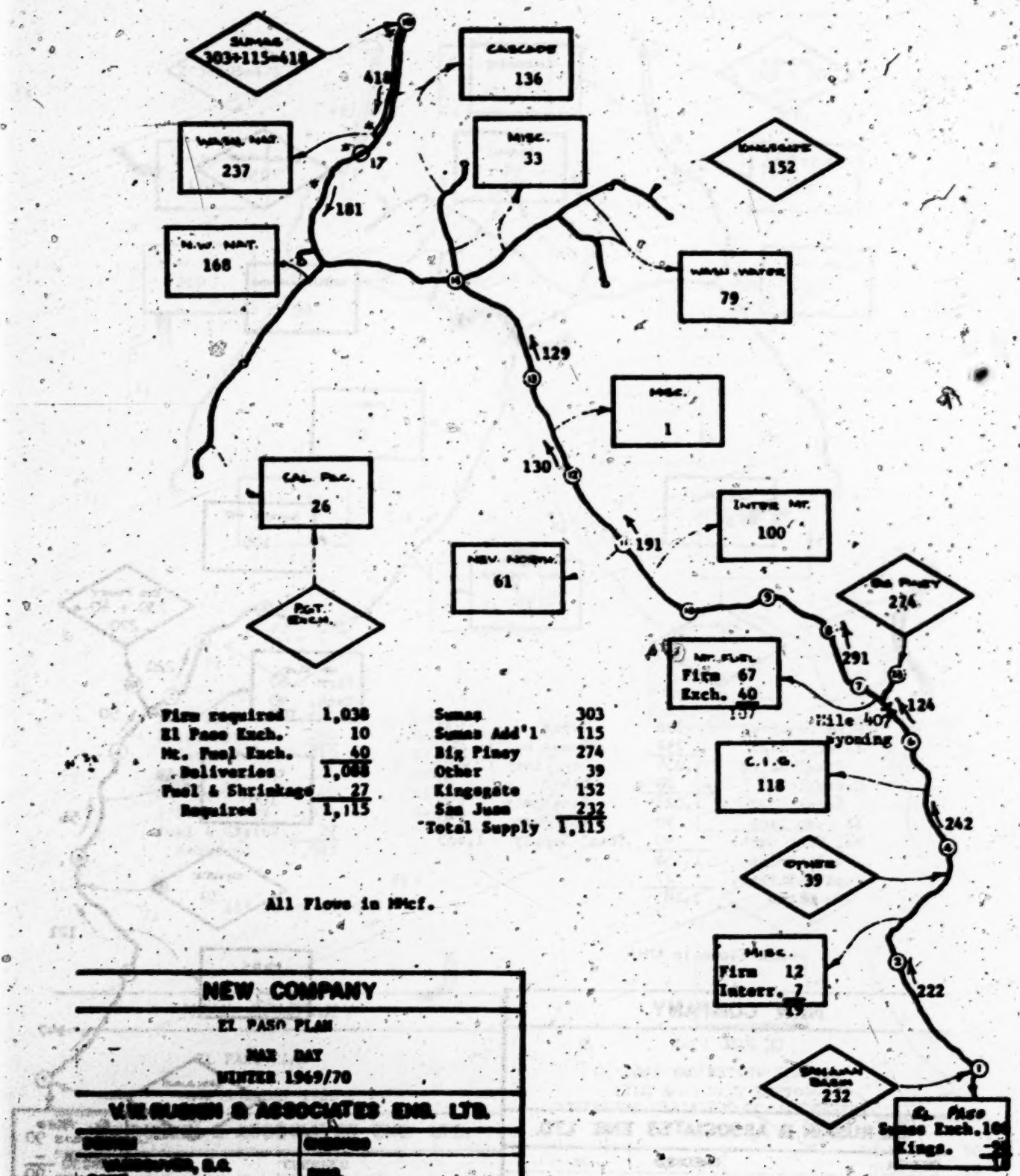
EL PASO PLAN

AVERAGE WINTER DAY 1969/70
(OTHER THAN PEAK DAY)
INTERR. LOADS CURTAILED SLIGHTLY

V.W. RUSKIN & ASSOCIATES ENG. LTD.

DESIGN	CHECKED
VANCOUVER, B.C. DATE	DWG.

Exhibit 2.3



Firm required	1,038	Sumas	303
El Paso Exch.	10	Sumas Add'l	115
Mt. Fuel Exch.	40	Big Piney	274
Deliveries	1,088	Other	39
Fuel & Shrinkage	27	Kingsgate	152
Required	1,115	San Juan	232
		Total Supply	1,115

All Flows in Mmcf.

NEW COMPANY	
EL PASO PLAN	
MAX DAY	
WINTER 1969/70	
V.W. KUSSIN & ASSOCIATES ENG. LTD.	
VANCOUVER, B.C.	ENG.

NEW COMPANY

Projection Of Gas Sales and Revenue - 1965

Table N1

Company	Max. Day MMcf/day Firm Only	Sales Volumes - MMcf				Est. Revenue Thousands $	Est. Avg. Unit Revenue ¢/Mcf
		Firm	Interr.	NDS 1	Total		
Cascade	90.9	11,245	27,394	-	38,639	$ 13,509	35.0¢
Northwest Natural	105.9	32,007	19,542	2,181	53,730	17,879	33.3
Washington Natural	131.6	41,547	122	2,850	44,519	16,467	37.0
Washington Water Power	55.2	11,922	2,888	514	15,324	5.795	37.8
Cal. Pacific Utilities	16.5	2,350	3,908	-	6,258	2,222	35.5
Other Washington & Oregon sales	28.7	8,165	2,728	-	10,893	4,292	41.2
Intermountain	74.9	9,633	10,148	-	19,781	7,631	38.6
Other Idaho sales	.1	36	2,373	-	2,409	709	29.5
Nevada Northern Pipelines	37.5	3,675	-	-	3,675	1,397	38.0
Mt. Fuel	58.8	18,250	-	-	18,250	4,909	26.9
Subtotal to Station 6	620.1	138,830	69,103	5,545	213,478	$ 74,810	35.0¢
Colorado Interstate	117.5	36,400	-	-	36,400	9,965	27.3
Other Colo., Utah, N.M. sales	27.5	1,387	4,818	-	6,205	1,862	30.0
Subtotal to Station 1	765.1	176,617	73,921	5,545	256,083	$ 86,637	33.8
Sales to El Paso - Sumas	100.0	32,850	-	-	32,850	7,227	22.0
- Kingsgate (Summer)	-	-	21,816	-	21,816	5,886	27.0
TOTAL SALES	865.1	209,467	95,737	5,545	310,749	$ 99,750	32.1¢

W. W. RUSKIN & ASSOCIATES ENGINEERING LTD.

NEW COMPANY

Projection Of Gas Sales and Revenue - 1966

Table M2

Company	Max. Day MMcf/day Firm Only	Sales Volumes - MMcf				Est. Revenue Thousands $	Est. Avg. Unit Revenue ¢/Mcf
		Firm	Interr.	MDS 1	Total		
Cascade	100.5	12,483	27,394	-	39,877		
Northwest Natural	120.6	34,274	19,542	2,181	55,997		
Washington Natural	170.6	45,370	122	2,850	48,342		
Washington Water Power	60.4	12,702	2,888	514	16,104		
Cal. Pacific Utilities	19.2	2,774	3,908	-	6,682		
Other Washington & Oregon sales	29.5	8,322	2,728	-	11,050		
Intermountain	79.4	10,293	10,148	-	20,441		
Other Idaho sales	.1	36	2,373	-	2,409		
Nevada Northern Pipelines	46.6	6,899	-	-	6,899		
Mt. Fuel	58.8	18,250	-	-	18,250		
Subtotal to Station 6	685.7	151,403	69,103	5,545	226,051	$ 78,714	34.8¢
Colorado Interstate	117.5	36,400	-	-	36,400	9,937	27.3
Other Colo., Utah, N.M. sales	27.5	1,387	4,818	-	6,205	1,862	30.0
Subtotal to Station 1	830.7	189,190	73,921	5,545	268,656	$ 90,513	33.7¢
Sales to El Paso - Sumas	100.0	32,850			32,850	7,227	22.0
- Kingsgate (Summer)	-		17,850		17,850	4,819	27.0
TOTAL SALES	930.7	222,040	91,771	5,545	319,356	$ 102,559	32.1¢

K. W. RUBIN & ASSOCIATES ENGINEERING LTD.

EXHIBIT 2.5

NEW COMPANY

Exhibit 2.6

Projection Of Gas Sales and Revenue - 1967

Table N3

Company	Max. Day Mcf/day Firm Only	Sales Volumes - Mcf Firm	Interr.	NDS 1	Total	Est. Revenue Thousands $	Est. Avg. Unit Revenue ¢/Mcf
Cascade	110.2	17,338	27,394		44,732		
Northwest Natural	131.7	38,435	19,542	2,181	60,158		
Washington Natural	189.5	49,275	122	2,850	52,247		
Washington Water Power	65.1	13,469	2,888	514	16,871		
Cal. Pacific Utilities	21.1	3,066	3,908	-	6,974		
Other Washington & Oregon sales	29.8	8,359	2,728	-	11,087		
Intermountain	83.8	10,877	10,148	-	21,025		
Other Idaho sales	.1	36	2,373	-	2,409		
Nevada Northern Pipelines	50.2	8,395	-	-	8,395		
Mt. Fuel	58.8	18,250	-	-	18,250		
Subtotal to Station 6	740.3	167,500	69,103	5,545	242,148	$ 83,368	34.4¢
Colorado Interstate	117.5	36,400	-	-	36,400	9,937	27.3
Other Colo., Utah, N.M. sales	27.5	1,387	4,818	-	6,205	1,862	30.0
Subtotal to Station 1	885.3	205,287	73,921	5,545	284,753	$ 95,167	33.4¢
Sales to El Paso - Sumas	100.0	32,850	-	-	32,850	7,227	22.0
- Kingsgate (Summer)	-	-	13,879	-	13,879	3,747	27.0
= TOTAL SALES	985.3	238,137	87,800	5,545	331,482	$106,141	32.0¢

W. W. RUSKIN & ASSOCIATES ENGINEERING LTD.

EXHIBIT 2.6

NEW COMPANY

Projection Of Gas Sales and Revenue - 1968

Table N4

Company	Max. Day Mcf/day Firm Only	Sales Volumes - Mcf Firm	Interr.	MDS 1	Total	Est. Revenue Thousands $	Est.Avg. Unit Revenue ¢/Mcf
Cascade	120.1	19,053	27,558	-	46,611		
Northwest Natural	148.0	42,231	20,652	2,181	65,064		
Washington Natural	208.5	52,597	273	2,850	55,720		
Washington Water Power	69.7	14,089	3,137	514	17,740		
Cal. Pacific Utilities	22.6	3,212	5,110	-	8,322		
Other Washington & Oregon sales	30.1	8,395	4,417	-	12,812		
Intermountain	88.0	11,425	10,220	-	21,645		
Other Idaho sales	.1	36	2,044	-	2,080		
Nevada Northern Pipelines	54.0	10,512	-	-	10,512		
Mt. Fuel	58.8	18,250	-	-	18,250		
Subtotal to S ion 6	799.9	179,800	73,411	5,545	258,756	$ 89,022	34.4¢
Colorado Interstate	117.5	36,400	-	-	36,400	9,937	27.3
Other Colo., Utah, N.M. sales	27.5	1,387	4,818	-	6,205	1,862	30.0
Subtotal to Station 1	994.9	217,587	78,229	5,545	301,361	$100,821	33.5¢
Sales to El Paso - Sumas	100.0	32,850			32,850	7,227	22.0
- Kingsgate (S r)			9,916		9,916	2,677	27.0
TOTAL SALES	1,044.9	250,437	88,145	5,545	344,127	$110,725	32.2¢

W.W. RUSKIN & ASSOCIATES ENGINEERING LTD.

EXHIBIT 2.7

NEW COMPANY

Projection of Gas Sales and Revenue - 1969

Table N5

Company	Max. Day Mcf/day Firm Only	Sales Volumes - Mcf				Est. Revenue Thousands $	Est.Avg. Unit Revenue ¢/Mcf
		Firm	Interr.	NDS 1	Total		
Cascade	136.0	21,535	29,565	-	51,100		
Northwest Natural	168.0	47,815	25,185	2,900	75,900		
Washington Natural	237.0	55,353	292	2,300	57,945		
Washington Water Power	79.0	16,060	3,650	300	20,010		
Cal. Pacific Utilities	26.0	3,650	5,475	-	9,125		
Other Washington & Oregon sales	34.0	9,454	7,300	-	16,754		
Intermountain	100.0	13,140	10,950	-	24,090		
Other Idaho sales	.r	36	2,190	--	2,226		-
Nevada Northern Pipelines	61.0	12,045	-	-	12,045		
Mt. Fuel	67.0	20,805	-	-	20,805		
Subtotal to Station 6	908.0	199,893	84,607	5,500	290,000	$ 99,760	34.4¢
Colorado Interstate	117.5	36,400	-	-	36,400	9,937	
Other Colo., Utah, N.M. sales	27.5	1,387	4,818	-	6,205	1,862	
Subtotal to Station 1	1,053.0	237,680	89,425	5,500	332,605	$111,559	33.5¢
Sales to El Paso - Sumas	100.0	32,850			32,850	7,227	22.0
- Kingsgate (Summer)			5,950		5,950	1,606	27.0
TOTAL SALES	1,153.0	270,530	95,375	5,500	371,405	$120,392	32.4¢

V. W. RUSKIN & ASSOCIATES ENGINEERING LTD.

EXHIBIT 2.8

NEW COMPA

"EL PASO PLAN"

Page 1

Cost Of Gas and Supply - Requirements Balance

		1965	1966	1967	1968	1969
Sales Requirements						
Gas Sales	- Mcf	310,749	319,356	331,482	344,127	371,405
Est. Fuel & Shrinkage	- Mcf	6,801	3,815	5,449	8,603	9,285
Gas Requirements	- Mcf	317,550	323,171	336,931	352,730	380,690
U.S. Gas	- Mcf					
1. Big Piney		86,724	86,687	87,198	79,497	72,781
2. San Juan		69,423	75,190	88,877	80,957	73,000
3. Other Fields		11,862	11,753	11,315	10,840	10,549
4. Total wellhead, field line purchases & production		168,009	173,630	187,390	171,294	156,330
Canadian Gas						
5. Sumas (Westcoast) Existing		99,682	99,682	99,682	99,682	99,682
6. Sumas Future Purchase					31,895	74,819
7. Kingsgate Purchase		49,859	49,859	49,859	49,859	49,859
8. Total Transmission Line		149,541	149,541	149,541	181,436	224,360
TOTAL						
9. TOTAL GAS SUPPLY	- Mcf	317,550	323,171	336,931	352,730	380,690

W.W. HUDSON & ASSOCIATES ENGINEERING LTD.

EXHIBIT 2.9

[fol. 333-46]

V. W. RUSKIN & ASSOCIATES ENGINEERING LTD.

		1965	1966	1967	1968	1969
	Cost of Gas - $ Thousands					
10.	U.S. wellhead and field line purchases	$20,223	$20,162	$19,786	$18,158	$16,749
11.	Sumas Existing @ 22¢	21,930	21,930	21,930	21,930	21,930
12.	Sumas Future @ 29¢				9,250	11,626
13.	Kingsgate @ 25¢	12,465	12,465	12,465	12,465	12,465
14.	Total "Other Gas Expenses"	$54,618	$54,557	$54,180	$61,803	$72,770
	Production & Gathering - $ Thousands					
15.	Production and gathering	$ 2,458	$ 2,567	$ 3,142	$ 2,866	$ 2,584
16.	Balancing gas @ 4-1/2¢ gathering	497	597	736	670	610
17.	Subtotal	$ 2,955	$ 3,164	$ 3,872	$ 3,536	$ 3,194
18.	Products extraction - Opal	$ 2,215	$ 2,200	$ 2,200	$ 2,200	$ 2,200
19.	- Ignacio & Barnhart	1,163	1,200	1,200	1,200	1,200
20.	Subtotal products extraction	$ 3,378	$ 3,400	$ 3,400	$ 3,400	$ 3,400
21.	Total Production & Gathering	$ 6,333	$ 6,564	$ 7,272	$ 6,936	$ 6,594
22.	Royalty $ Thousands	$ 2,735	$ 3,311	$ 4,940	$ 4,500	$ 4,000
23.	Depletion $ Thousands	$ 916	$ 1,069	$ 1,469	$ 1,300	$ 1,200
24.	Total Cost of Gas Sold (14+21+22+23)	$64,601	$65,501	$67,862	$74,539	$84,564
25.	Avg. cost of Gas Sold (24/9)	20.34¢	20.27¢	20.14¢	21.13¢	22.21¢

EXHIBIT 2.10

V. W. RUSKIN & ASSOCIATES ENGINEERING LTD.

1965 Firm and Interruptible Sales Requirements Of Present El Paso Northwest Division Customers

Line	Customer	Average Day Sales Requirements - Mcf			Average Day Interr. Requirements as % of Total Sales Requirements
		Firm	Interr.	Total	
1	Colorado Interstate	100.0	-	100.0	0.0%
2	Mt. Fuel	50.0	-	50.0	0.0%
3	Intermountain	26.4	27.8	54.2	51.2%
4	Cascade	30.8	75.1	105.9	71.2%
5	Northwest Natural	87.7	59.5	147.2	40.5%
6	Washington Water Power	32.7	9.3	42.0	22.1%
7	Washington Natural	113.8	8.2	122.0	6.7%
8	Cal. Pacific	6.4	10.7	17.1	62.5%
9	Nevada Northern	10.1	-	10.1	0.0%
10	Others & Direct Industrials	26.0	27.1	53.1	50.8%
11	El Paso Sales Northwest Division	483.9	217.7	701.6	30.9%

A. Original Sales Requirements, Curtailment and Supply Projections by Northwest Division of El Paso (Before Divestiture Plan)

1		1965	1966	1967	1968	1969
Sales Requirements of Present Customers of El Paso Northwest Division* - Average Day MMcf						
2	Firm	483.9	518.3	562.6	596.4	-
3	Interruptible	217.7	226.7	228.6	229.1	
4	Fuel & Shrinkage	14.6	15.6	16.6	17.3	
5	Total	716.2	760.6	807.8	842.8	
6	Curtailment Indicated Avg. Day MMcf	0	0	0	0	
7	%	0%	0	0	0%	
Supply of Present Customers of El Paso Northwest Division* - Average Day MMcf						
8		716.2	760.6	807.8	842.8	

B. Proposed Divestiture Plan Sales Requirements, Curtailment and Supply Projections of New Company

1		1965	1966	1967	1968	1969
Sales Requirements of Present Customers of El Paso Northwest Division* Average Day MMcf						
2	Firm	483.9	518.3	562.6	596.4	660.0
3	Interruptible	217.7	226.7	228.6	229.1	250.0
4	Fuel & Shrinkage	14.6	15.6	16.6	17.3	20.0
5	Subtotal	716.2	760.6	807.8	842.8	930.0
Proposed Sales & Exchange Requirements for El Paso - Average Day MMcf						
5A	Sumas	90.0	90.0	90.0	90.0	90.0
5B	Kingsgate	60.0	49.0	38.0	27.0	16.0
5C	Total Requirements	866.2	899.6	935.8	959.8	1,036.0
5D	Possible Redelivery of Kingsgate Gas	0	14.2	12.7	27.0	16.0
6	Indicated Curtailment Average Day MMcf	0	0	0	53.8	151.6
7	%	0%	0%	0%	23.5%	61%
Supply shown in Tab 8 of El Paso Proposal for New Company* Average Day MMcf						
8		870	885.4	923.1	879.0	868.4

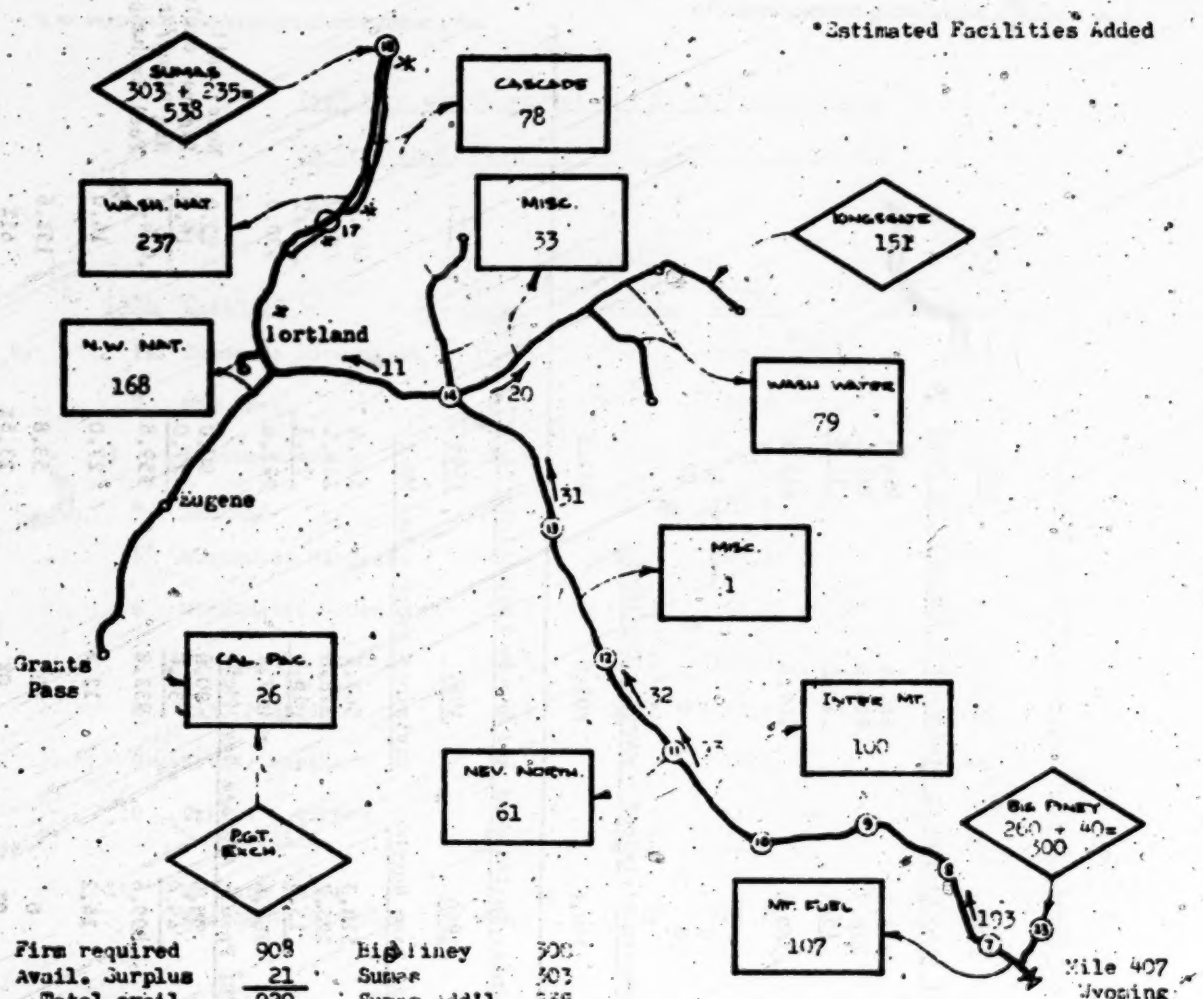
Note: *All figures exclude Big Piney/Mt. Fuel Exchange.

W.W. RUSKIN & ASSOCIATES ENGINEERING LTD.

EXHIBIT 2.11

EXHIBIT 3.1

*Estimated Facilities Added

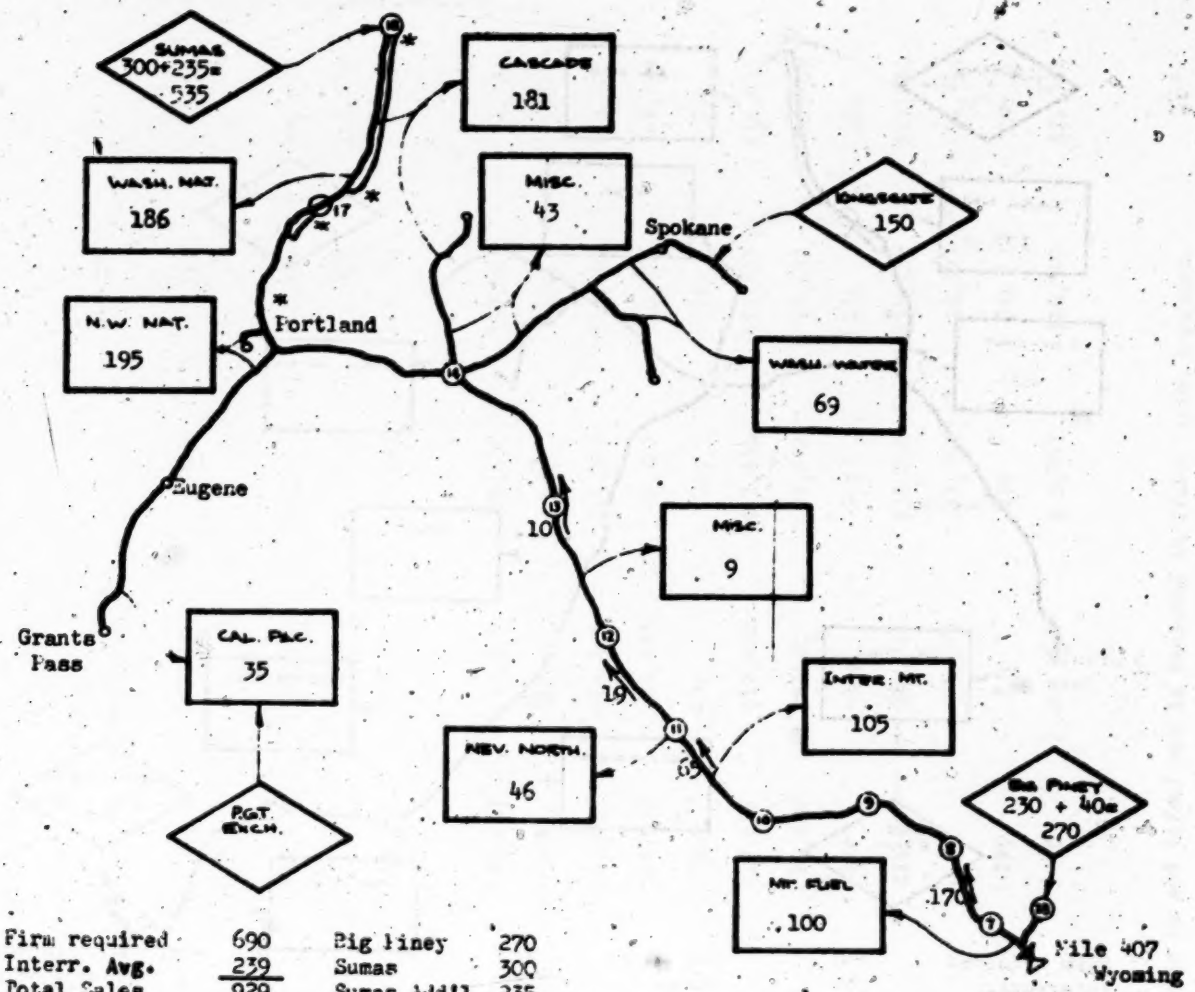


Firm required	909	Big Piney	300
Avail. Surplus	21	Sumas	303
Total avail.	929	Sumas Add'l	235
Mt. Fuel Exch.	40	Kingsgate	151
Deliveries	969		989
Fuel & Shrinkage	20		
Required	989		

All Flows in MMcF

NEW COMPANY
NORTHWEST PLAN
MAX DAY
WINTER 1969/70
V.W. RUSKIN & ASSOCIATES ENG. LTD.
DESIGN / CHECKED
VANCOUVER, B.C. / DWG.
DATE

EXHIBIT 3.2

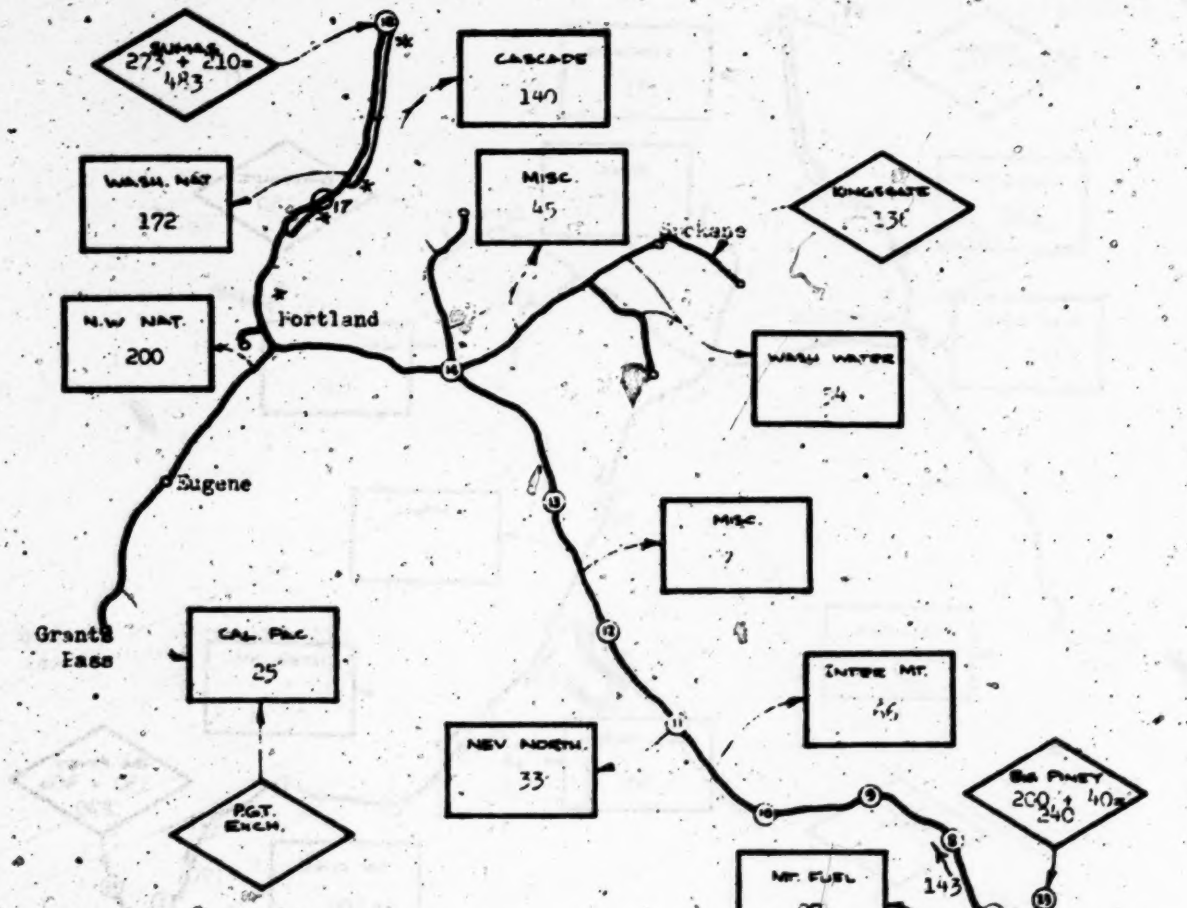


Firm required	690	Big Piney	270
Interr. Avg.	239	Sumas	300
Total Sales	929	Sumas Add'l	235
Curtailed	-34	Kingsgate	150
Sales	895		955
Mt. Fuel Exch.	40		
Deliveries	935		
Fuel & Shrink.	20		
Required	955		

All Flows in MMcF

NEW COMPANY	
NORTHWEST PLAN	
AVG. WINTER DAY 1969/70 (CRITICAL PEAK DAY)	
INTERR. LOADS CURTAILED SOMEWHAT	
V.W. RUSKIN & ASSOCIATES ENG. LTD.	
DESIGN	CHECKED
VANCOUVER, B.C. DATE	DWG.

EXHIBIT 3.3



Firm required	560	Big Piney	240
Interrupt.	239	Sumas	273
Total Sales	799	Sumas Add'l	210
Mt. Fuel Exch.	40	Kingsgate	136
Deliveries	839	Total Supply	859
Fuel & Shrinkage	27		
Required	859		

All Flows in MMcF

NEW COMPANY	
NORTHWEST PLAN	
AVERAGE DAY 1969	
V.W. RUSKIN & ASSOCIATES ENG. LTD.	
DESIGN	CHECKED
VANCOUVER, B.C.	SUPV.
DATE	

NEW CONTRACT

"NORTHWEST PLAN"

Cost Of Gas and Supply - Requirements Sale

		1965	1966	1967	1968	1969
1. Requirements						
Gas Sales	- MMcf	213,478	226,051	242,148	258,756	290,000
Est. Fuel & Shrinkage *	- MMcf	4,260	4,520	4,840	6,469	7,250
Gas Purchases	- MMcf	217,738	230,571	246,988	265,225	297,250
2. Cost of Gas						
Big Piney Purchase	- MMcf	68,233	79,500	79,500	79,497	72,781
Est. price	- ¢/Mcf	18¢	18¢	18¢	18¢	18¢
Est. cost	- $ Thousands	$12,282	$14,310	$14,310	$14,309	$13,100
Kinnear Purchase	- MMcf	49,823	49,823	49,823	49,823	49,823
Est. price **	¢/Mcf	25¢	25¢	25¢	25¢	25¢
Est. cost	- $ Thousands	$12,456	$12,456	$12,456	$12,456	$12,456
Supply (Westcoast) Purchase	- MMcf	99,682	99,682	99,682	99,682	99,682
Est. price	- ¢/Mcf	22¢	22¢	22¢	22¢	22¢
Est. Cost	- $ Thousands	$21,930	$21,930	$21,930	$21,930	$21,930
Supply (Westcoast) Addl Purchase	- MMcf	0	1,566	17,983	36,223	74,964
Est price	- ¢/Mcf	29¢	29¢	29¢	29¢	29¢
Est Cost	- $ Thousands	0	$ 454	$ 5,217	$10,505	$21,740

Notes: * Excl. Mt. Fuel Exchange
** Transportation by PGT is estimated to add 2¢/Mcf and is included in Transmission Expenses.

W. W. RUSKIN & ASSOCIATES ENGINEERING LTD.

W.W. RUSKIN & ASSOCIATES ENGINEERING LTD.

[fol. 333-53]

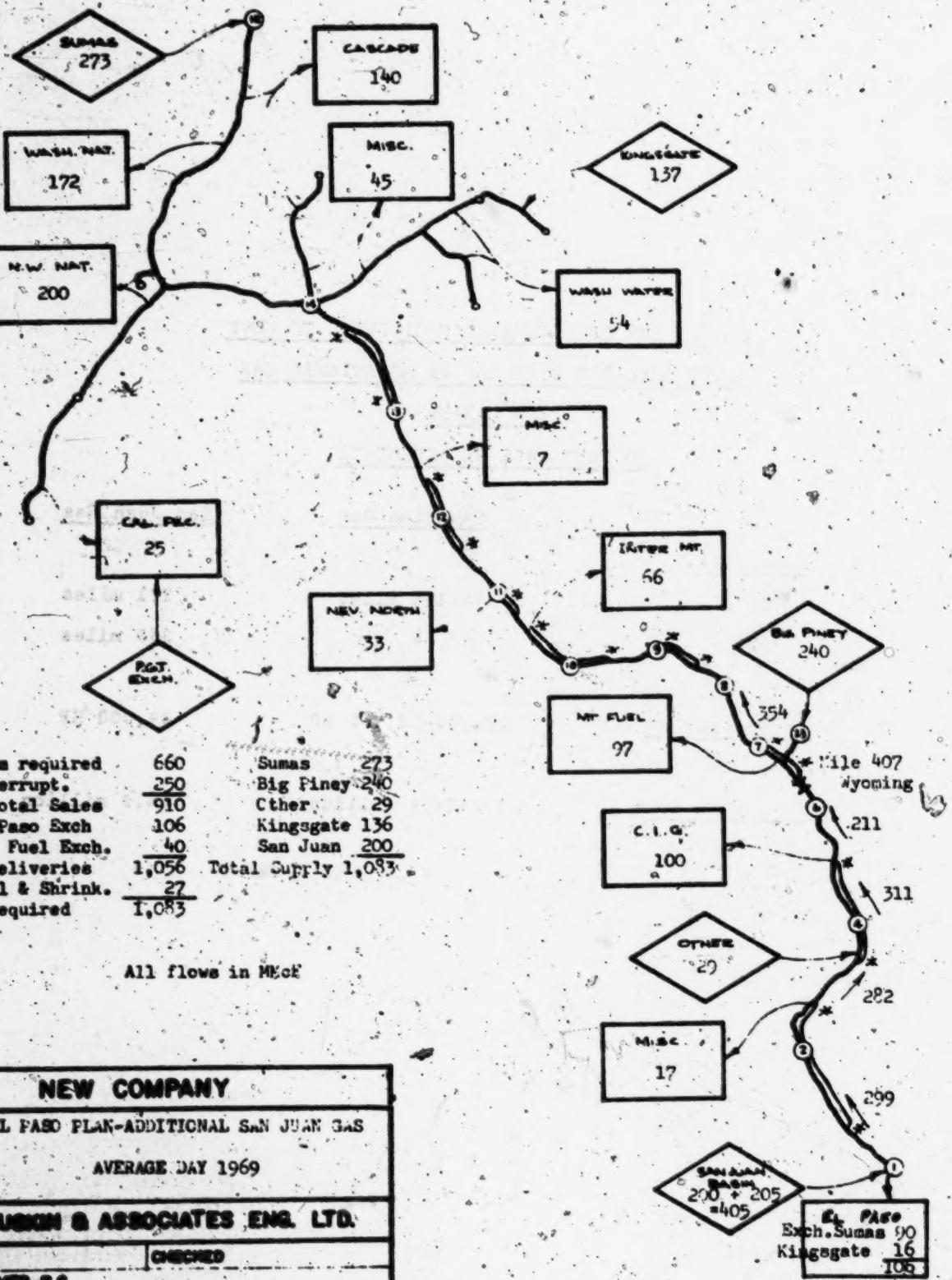
2. Cost of Gas - continued		1965	1966	1967	1968	1969
Total Purchases	- Mcf	217,738	230,571	246,988	265,225	297,250
Total Cost of Gas	- $ Thousands	$46,668	$49,150	$53,913	$59,200	$69,226
Avg. Cost of Gas	- ¢/Mcf	21.4¢	21.3¢	21.8¢	22.3¢	23.3¢

COMPARISON OF ESTIMATED FACILITIES TO MOVE ADDITIONAL SAN JUAN GAS vs ADDITIONAL GAS FROM CANADA TO MEET 1969 REQUIREMENTS

	Canadian Gas	San Juan Gas
Loop Line		
26"	78-105 miles	221 miles
22"	-	369 miles
Compressor HP	12,000-13,000 HP	44,000 HP
Estimated Cost	$11.5-14.4 million	$64.9 million

436

EXHIBIT 4.2



Firm required	660	Sumas	273
Interrupt.	250	Big Piney	240
Total Sales	910	Other	29
El Paso Exch	106	Kingsgate	136
Mt. Fuel Exch.	40	San Juan	200
Deliveries	1,056	Total Supply	1,083
Fuel & Shrink.	27		
Required	1,083		

All flows in MMcf

NEW COMPANY

EL PASO PLAN-ADDITIONAL SAN JUAN GAS

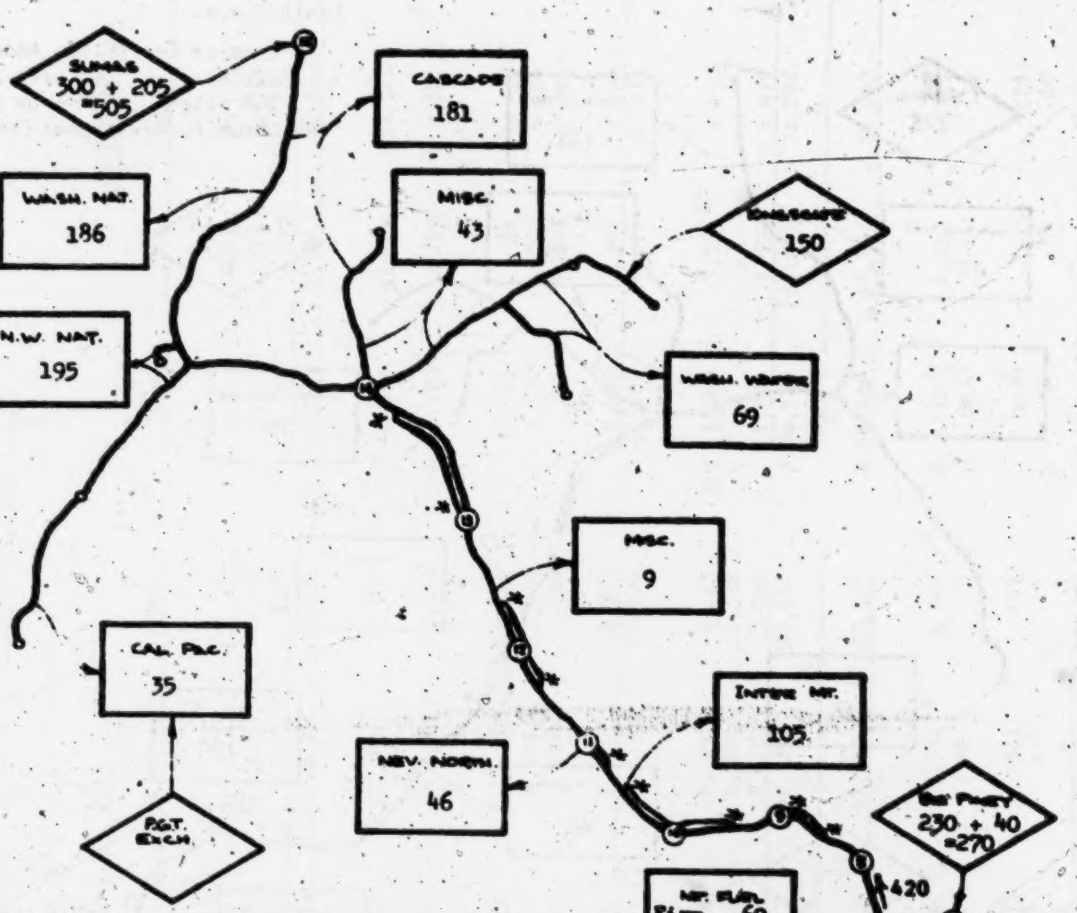
AVERAGE DAY 1969

V.W. RUSKIN & ASSOCIATES ENG. LTD.

DESIGN | CHECKED

VANCOUVER, B.C.

DATE | DWG.



Firm required	802
Interr. Ave.	252
Total Sales	1,054
Curtailed	- 26
Sales	1,028
El Paso Exch.	90
Mt. Fuel Exch.	40
Deliveries	1,158
Fuel & Shrinkage	27
	1,185

Sumas	300
San Juan	205
Big Piney	270
Other	30
Kingsgate	150
San Juan	230
Total Supply	1,185

all flows in MMcF

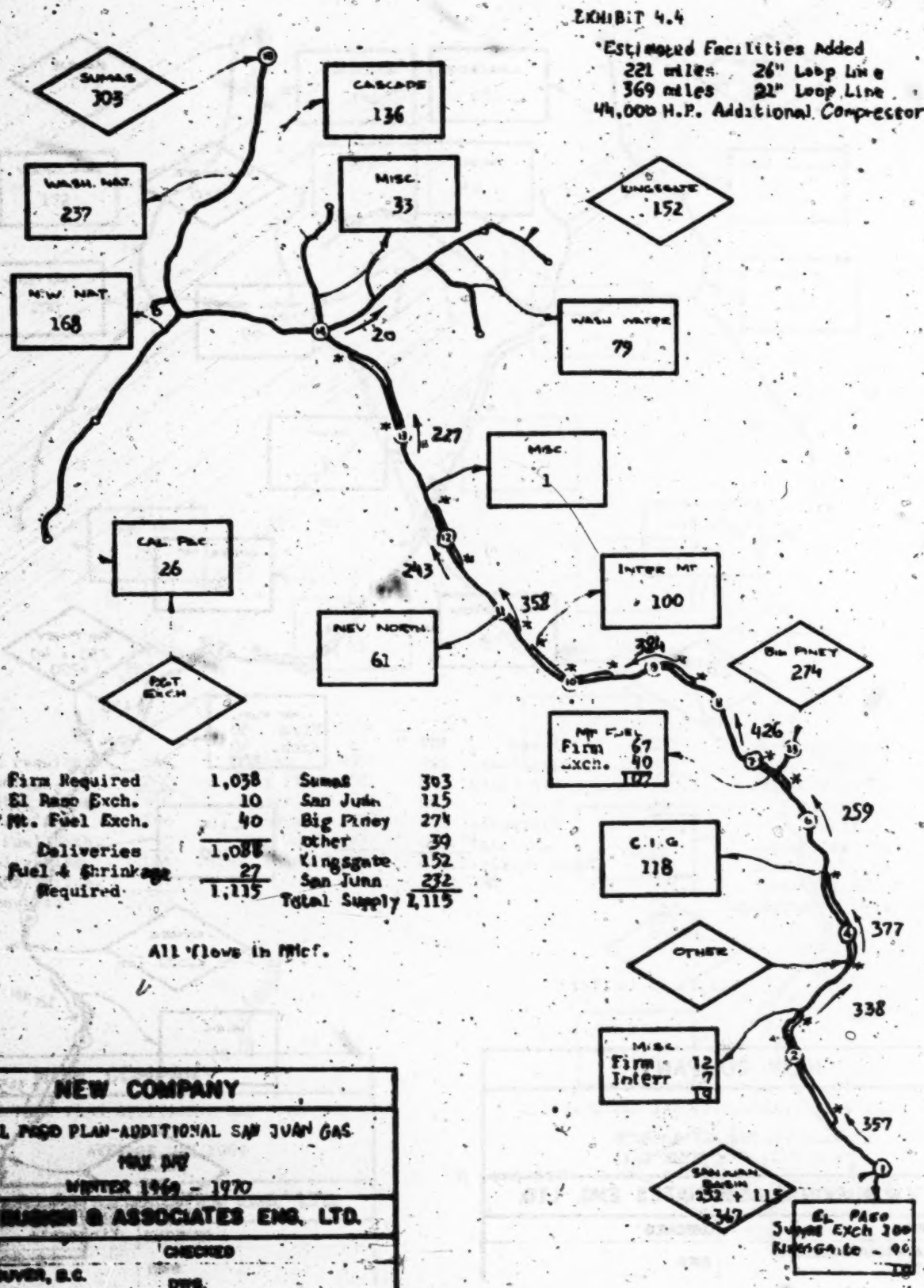
NEW COMPANY

EL PASO PLAN-ADDITIONAL SAN JUAN GAS

AVERAGE WINTER DAY 1969/70
(OTHER THAN PEAK DAY)

V.W. RUSKIN & ASSOCIATES ENG. LTD.

DESIGN	CHECKED
VANCOUVER, B.C. DATE	DWG.



Firm Required	1,038	Sumas	303
El Paso Exch.	10	San Juan	115
Mt. Fuel Exch.	40	Big Piney	274
Deliveries	1,088	Other	39
Fuel & Shrinkage	27	Kingsgate	152
Required	1,115	San Juan	232
		Total Supply	1,115

All flows in Mmcf.

NEW COMPANY	
EL PASO PLAN-ADDITIONAL SAN JUAN GAS	
MAX DAY	
WINTER 1969 - 1970	
K.R. RUSSIN & ASSOCIATES ENG. LTD.	
DESIGN	CHECKED
VANCOUVER, B.C.	
DATE	DWG.

Exhibit 5.1

COMPARATIVE STATEMENT PROFORMA FOR THE YEARS 1965 - 1969

(Stated in Thousands)

	EL PASO NATURAL GAS CO. PLAN					NORTHWEST PLAN				
	1965	1966	1967	1968	1969	1965	1966	1967	1968	1969
TING REVENUES										
Sales										
tal Gas Sales	$ 99,750	102,559	106,141	110,725	120,392	$ 74,810	78,714	83,368	89,022	99,760
tracted Products Sales	5,825	5,931	6,180	6,180	6,180	2,215	2,215	2,215	2,215	2,215
her Operating Revenues	2,033	2,071	2,171	2,170	2,170	584	584	584	584	584
Total Operating Revenues	$107,608	110,561	114,492	119,075	128,742	77,609	81,513	86,167	91,821	102,559
ES										
her Gas Supply Expenses	54,618	54,557	54,181	61,803	72,770	$ 46,668	49,150	53,913	59,200	69,226
tural Gas Production & Gathering Expenses	6,333	6,564	7,272	6,936	6,594	$ 3,700	3,700	3,700	3,700	3,700
s Well Royalties	2,735	3,311	4,940	4,500	4,000	-	-	-	-	-
ploration & Development Expenses	26	26	26	500	500	26	26	26	26	26
ansmission Expenses	4,764	4,787	4,816	4,900	5,050	4,100	4,150	4,200	4,300	4,400
les Expenses	316	316	316	320	320	291	291	291	291	291
ministrative & General & Customer Accounts Expense	3,973	3,976	3,981	4,000	4,000	2,500	2,500	2,500	2,500	2,500
Sub-Total	$ 72,765	73,537	75,532	82,959	93,234	$ 57,285	59,817	64,630	70,017	80,143
DEDUCTIONS										
preciation & Amortization	$ 9,015	9,044	9,066	9,197	9,413	$ 5,300	5,350	5,410	5,480	5,710
pletion	915	1,069	1,469	1,300	1,200	-	-	-	-	-
er Taxes	3,459	3,588	3,704	3,870	3,990	1,950	2,000	2,050	2,100	2,150
Total Expenses	$ 86,154	87,238	89,771	97,326	107,837	$ 64,535	67,167	72,090	77,597	88,003
her Income	64	38	16	-	-	-	-	-	-	-
Total Expenses & Other Income	$ 86,090	87,200	89,755	97,326	107,837	$ 64,535	67,167	72,090	77,597	88,003
DEDUCTIONS										
terest	$ 9,080	8,606	8,114	8,175	8,367	$ 4,782	4,552	4,312	4,384	4,572
ortization of Debt Expenses	45	39	35	35	35	24	21	19	19	19
terest Charged to Construction (Credit)	(13)	(13)	(11)	(80)	(65)	(18)	(18)	(25)	(78)	(84
cellaneous Amortization	47	47	47	47	47	50	50	50	50	50
cellaneous Other Deductions	6	6	6	6	6	-	-	-	-	-
Total Other Deductions	$ 9,165	8,685	8,191	8,183	8,390	$ 4,838	4,605	4,356	4,375	4,557

ATEMENT PROFORMA FOR THE YEARS 1965 - 1969

usands)

	EL PASO NATURAL GAS CO. PLAN					NORTHWEST PLAN				
	1965	1966	1967	1968	1969	1965	1966	1967	1968	1969
penses & Other ions	$ 95,255	95,885	97,946	105,509	116,227	$ 69,373	71,772	76,446	81,972	92,560
Before Provision ral Income Tax	$ 12,353	14,676	16,546	13,566	12,515	$ 8,236	9,741	9,721	9,849	9,999
FEDERAL INCOME TAX										
for Current Year	$ 4,321	5,938	7,493	-	-	$ -	-	-	-	-
for Deferred Income Tax	859	457	92	-	-	-	-	-	-	-
ovision for Federal Tax	$ 5,180	6,395	7,585	6,219	5,737	$ 3,454	4,244	4,456	4,515	4,584
	$ 7,173	8,281	8,961	7,347	6,778	$ 4,782	5,497	5,265	5,334	5,415

EXHIBIT 5.2

COMPARATIVE SCHEDULE OF PROJECTED RATE BASE AND RATE OF RETURN

1965 - 1969

(Stated In Thousands)

(a)	EL PASO NATURAL GAS CO. PLAN					NORTHWEST PLAN				
	1965	1966	1967	1968	1969	1965	1966	1967	1968	1969
OF RATE OF RETURN										
	$ 7,173	8,281	8,961	7,347	6,778	$ 4,782	5,497	5,265	5,334	5,415
her Deductions	$ 9,165	8,685	8,192	8,183	8,390	$ 4,838	4,605	4,356	4,375	4,557
tal	$ 16,338	16,966	17,153	15,530	15,168	$ 9,620	10,102	9,621	9,709	9,972
nt Tax Credit	$ 99	99	77	400	325	$ 94	94	124	390	420
come	65	39	16	-	-	-	-	-	-	-
ility Income	$ 16,174	16,828	17,060	15,130	14,843	$ 9,526	10,008	9,497	9,319	9,552
RN (On Rate Base low)	6.13%	6.63%	6.98%	6.34%	6.31%	6.79%	7.41%	7.25%	7.12%	7.16%
PLANT										
In Service and Gas d for Future Use										
g of Year Balance	$335,285	337,180	339,076	340,620	348,620	$176,580	178,380	180,180	182,680	190,480
ditions	1,895	1,896	1,544	8,000	6,500	1,800	1,800	2,500	7,800	8,400
Year Balance	$337,180	339,076	340,620	348,620	355,120	$178,380	180,180	182,680	190,480	198,880
g of Year Total	$672,465	676,256	679,696	689,240	703,740	$354,960	358,560	362,860	373,160	389,360
Plant	$336,232	338,128	339,848	344,620	351,870	$177,480	179,280	181,430	186,580	194,680
DEPRECIATION, N AND DEPLETION										
g of Year Balance	$ 71,832	81,769	91,888	102,429	112,926	$ 37,600	42,900	48,250	53,660	59,140
ear Balance	81,769	91,888	102,429	112,926	123,539	42,900	48,250	53,660	59,140	64,850
	$153,601	173,657	194,317	215,355	236,465	$ 80,500	91,150	101,910	112,800	123,990
Plant Reserves	$ 76,800	86,828	97,158	107,678	118,233	$ 40,250	45,575	50,955	56,400	61,995
ent	$259,432	251,300	242,689	236,942	233,637	$137,230	133,705	130,475	130,180	132,685
ERTY										
Advances Relating Supply	$ 1,164	1,142	1,120	1,099	1,077	-	-	-	-	-
tion In Aid of uction	(572)	(572)	(572)	(520)	(500)	(592)	(570)	(548)	(520)	(500)
	$ 592	570	548	579	577	(592)	(570)	(548)	(520)	(500)

[fol. 333-601]

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COMPARATIVE STATEMENT PROFORMA FOR THE YEARS 1965 - 1969

(Stated in Thousands)

Page II

	EL PASO NATURAL GAS CO. PLAN					NORTHWEST PLAN			
	1965	1966	1967	1968	1969	1965	1966	1967	1968
Total Expenses & Other Deductions	$ 95,255	95,885	97,946	105,509	116,227	$ 69,373	71,772	76,446	81,972
Net Income Before Provision for Federal Income Tax	$ 12,353	14,676	16,546	13,566	12,515	$ 8,236	9,741	9,721	9,849
PROVISION FOR FEDERAL INCOME TAX									
Provision for Current Year	$ 4,321	5,938	7,493	-	-	$ -	-	-	-
Provision for Deferred Federal Income Tax	859	457	92	-	-	-	-	-	-
Total Provision for Federal Income Tax	$ 5,180	6,395	7,585	6,219	5,737	$ 3,454	4,244	4,456	4,515
NET INCOME	$ 7,173	8,281	8,961	7,347	6,778	$ 4,782	5,497	5,265	5,334

EXHIBIT 5.2

COMPARATIVE SCHEDULE OF PROJECTED RATE BASE AND RATE OF RETURN

1965 - 1969

(Stated In Thousands)

DESCRIPTION (a)	EL PASO NATURAL GAS CO. PLAN					NORTHWEST PLAN			
	1965	1966	1967	1968	1969	1965	1966	1967	1968
COMPUTATION OF RATE OF RETURN									
Net Income	$ 7,173	8,281	8,961	7,347	6,778	$ 4,782	5,497	5,265	5,33
Add:									
Total Other Deductions	$ 9,165	8,685	8,192	8,183	8,390	$ 4,838	4,605	4,356	4,37
Sub-Total	$ 16,338	16,966	17,153	15,530	15,168	$ 9,620	10,102	9,621	9,70
Deduct:									
Investment Tax Credit	$ 99	99	77	400	325	$ 94	94	124	39
Other Income	65	39	16	-	-	-	-	-	-
Net Utility Income	$ 16,174	16,828	17,060	15,130	14,843	$ 9,526	10,008	9,497	9,31
RATE OF RETURN (On Rate Base Shown Below)	6.13%	6.63%	6.98%	6.34%	6.31%	6.79%	7.41%	7.25%	7.12
RATE BASE & PLANT									
Gas Plant In-Service and Gas Plant Held for Future Use									
Beginning of Year Balance	$335,285	337,180	339,076	340,620	348,620	$176,580	178,380	180,180	182,68
Plant Additions	1,895	1,896	1,544	8,000	6,500	1,800	1,800	2,500	7,80
End of Year Balance	$337,180	339,076	340,620	348,620	355,120	$178,380	180,180	182,680	190,48
Beginning of Year Total	$672,465	676,256	679,696	689,240	703,740	$354,960	358,560	362,860	373,16
Average Plant	$336,232	338,128	339,848	344,620	351,870	$177,480	179,280	181,430	186,58
RESERVE FOR DEPRECIATION, AMORTIZATION AND DEPLETION									
Beginning of Year Balance	$ 71,832	81,769	91,888	102,429	112,926	$ 37,600	42,900	48,250	53,66
End of Year Balance	81,769	91,888	102,429	112,926	123,539	42,900	48,250	53,660	59,14
Total	$153,601	173,657	194,317	215,355	236,465	$ 80,500	91,150	101,910	112,80
Average Plant Reserves	$ 76,800	86,828	97,159	107,678	118,233	$ 40,250	45,575	50,955	56,40
Net Plant	$259,432	251,300	242,689	236,942	233,637	$137,230	133,705	130,475	130,18
OTHER INVESTMENTS									
Capital Advances Relating to Gas Supply	$ 1,164	1,142	1,120	1,099	1,077	-	-	-	-
Contributions In Aid of Construction	(572)	(572)	(572)	(520)	(500)	(392)	(570)	(548)	(52
Total	$ 592	570	548	579	577	(392)	(570)	(548)	(52

EDULE OF PROJECTED RATE BASE AND RATE OF RETURN

sands)

	EL PASO NATURAL GAS CO. PLAN					NORTHWEST PLAN				
	1965	1966	1967	1968	1969	1965	1966	1967	1968	1969
ent	$260,024	251,870	243,237	237,521	234,214	$136,638	133,135	129,927	129,660	132,185
Working Capital	$ 5,611	4,193	3,083	-	-	-	-	-	-	-
ital Credit	(1,901)	(2,138)	(1,948)	-	-	-	-	-	-	-
ng Capital	$ 3,710	2,055	1,135	1,200	1,200	3,700	2,000	1,100	1,200	1,200
	$263,734	253,925	244,372	238,721	235,414	$140,338	135,135	131,027	130,860	133,385

[fol. 333-62]

EXHIBIT 5.3 REV.

Exhibit 5.3 REV

PROPOSED ASSETS TO BE DIVESTED
AS OF DECEMBER 19[illegible]

	El Paso Plan	Northwest Plan
Gross Utility Plant	$318,566,000	$174,760,000
Less: reserve for depreciation, amortization & depletion	67,429,000	37,559,000
Net Gas Plant	$251,157,000	$137,201,000
Other Plant	56,000	56,000
Net Properties	$251,213,000	$137,257,000
Investments		
Northwest Production Corporation	$ 13,260,000	-
Pacific Northwest Realty	576,000	$ 576,000
Intermountain	1,520,000	1,520,000
Phillips Pacific	590,000	-
Belco Petroleum Corporation	1,175,000	1,175,000
Other	69,000	69,000
Total	$ 17,190,000	$ 3,340,000
Other Assets	$ 6,807,000	$ 6,807,000
Liabilities		
Reserve for Gas Plant Adjustments	$ 10,000,000	$ 10,000,000
Long Term Debt Payable to Mobil Oil	469,000	469,000
Prepaid Gas Sales Colorado Interstate	640,000	-
Contributions in Aid of Construction	572,000	572,000
Provision for Deferred Fed. Income Tax	20,065,000	20,065,000
	$ 31,946,000	$ 31,106,000

SUMMARY

Net Properties	$251,213,000	$137,257,000
Investments	17,190,000	3,340,000
Other Assets	6,807,000	6,807,000
Total	$275,210,000	$147,404,000
Less: liabilities	31,946,000	31,106,000
NET BOOK VALUE	$243,264,000	$116,298,000

COMPARATIVE SCHEDULE OF PROJECTED RATE BASE AND RATE OF RETURN

1965 - 1969

(Stated In Thousands)

Page II

	EL PASO NATURAL GAS CO. PLAN					NORTHWEST PLAN			
	1965	1966	1967	1968	1969	1965	1966	1967	1968
Net Investment	$260,024	251,870	243,237	237,521	234,214	$136,638	133,135	129,927	129,660
WORKING CAPITAL									
Preliminary Working Capital	$ 5,611	4,193	3,083	-	-	-	-	-	-
Working Capital Credit	(1,901)	(2,138)	(1,948)	-	-	-	-	-	-
Net Working Capital	$ 3,710	2,055	1,135	1,200	1,200	3,700	2,000	1,100	1,200
RATE BASE	$263,734	253,925	244,372	238,721	235,414	$140,338	135,135	131,027	130,860

Exhibit 5.3 REV

PROPOSED ASSETS TO BE DIVESTED
AS OF DECEMBER 193[illegible]

	El Paso Plan	Northwest Plan
Gross Utility Plant	$318,586,000	$174,760,000
Less: reserve for depreciation, amortization & depletion	67,429,000	37,559,000
Net Gas Plant	$251,157,000	$137,201,000
Other Plant	56,000	56,000
Net Properties	$251,213,000	$137,257,000
Investments		
Northwest Production Corporation	$ 13,260,000	-
Pacific Northwest Realty	576,000	$ 576,000
Intermountain	1,520,000	1,520,000
Phillips Pacific	590,000	-
Belco Petroleum Corporation	1,175,000	1,175,000
Other	69,000	69,000
Total	$ 17,190,000	$ 3,340,000
Other Assets	$ 6,807,000	$ 6,807,000
Liabilities		
Reserve for Gas Plant Adjustments	$ 10,000,000	$ 10,000,000
Long Term Debt Payable to Mobil Oil	469,000	469,000
Prepaid Gas Sales Colorado Interstate	640,000	-
Contributions in Aid of Construction	572,000	572,000
Provision for Deferred Fed. Income Tax	20,065,000	20,065,000
	$ 31,946,000	$ 31,106,000

S U M M A R Y

Net Properties	$251,213,000	$137,257,000
Investments	17,190,000	3,340,000
Other Assets	6,807,000	6,807,000
Total	$275,210,000	$147,404,000
Less: liabilities	31,946,000	31,106,000
NET BOOK VALUE	$243,264,000	$116,298,000